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# **Idaho Public Utilities Commission**

Rule 54  
Formal Complaint

## **Respondent**

Idaho Power

## **Complainant**

Mark Pecchenino  
2173 N Ten Mile Road  
Kuna, ID 83634

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## **Summary and Statement of Facts**

Dear PUC Commission,

WHEREFORE, Mark Pecchenino, the (Complainant), legal owner of the subject property is filing a Formal Complaint (Complaint) with the Commission naming Idaho Power as the (Respondent) for damages to their property (Property) and trees (Trees).

The Formal Complaint filed herein is pursuant to IDAPA 31 – Idaho Public Utilities Commission, 31.01.01 – Rules of Procedure of The Idaho Public Utilities Commission Rule 54, Formal Complaints. It is the intent of the Complainant to bring several issues before the Commission in an effort to arrive at a rational and just settlement of damages, as well as correcting the Respondent's abusive, arbitrary and capricious policies so other residents in Idaho, serviced by the Respondent, will not have to suffer the same damages and injustices. This Complaint will evidence how the Respondent's policies and Section 7 of I.P.U.C. No. 29, Tariff No. 101 are arbitrary, capricious and in violation of Idaho Statutes and ordinances in addition to violating the Complainant's 14th Amendment of the US Constitution and Article I – Declaration of Rights, Section's 1, 3 and 14 of the Constitution of The State of Idaho.

The Complainant has years of experience evaluating regulatory compliance. The Complainant has a Masters Degree in urban planning and development, and three other degrees; one of which is in federal regulatory compliance. Additionally, the Complainant has performed hundreds of regulatory compliance reviews for various jurisdictions in Idaho while working for Boise City and other County agencies and as President of Pecchenino and Associates Inc., a land use planning and consulting firm. The Complainant's experience and knowledge has afforded him the opportunity to draft Idaho Statutes in addition to personally writing hundreds of land-use ordinances for numerous municipalities in Idaho. The Complainant is well versed in Idaho property rights, ordinances and countless State and Federal Statutes.

### **Site Location**

The facts contained herein, specially concern the subject property (Property) sited at 2173 N. Ten Mile Road Kuna, Idaho 83634. The Property is 5.11 acres in size and takes access from Ten Mile Road to the west. The Property is owned by The Mark and Raschel Pecchenino Revocable Family Trust and has been in their ownership since 2002. The subject trees (Trees) located on the Property and discussed herein are Lombardy Poplar Trees. They are sited along the northeastern portion of the Property boundary fronting Ten Mile Road. This Complaint represents and encompasses two (2) separate incidents approximately three (3) years apart. The first incident (Incident 1) occurring between 2017 and 2018 and the second incident (Incident 2) occurring on Tuesday April 27, 2020.

A timeline has been established for Incident 1 and Incident 2. This timeline is evidenced in Exhibit 1, Timeline Incident Summary. The Trees damaged by the Respondent are numbered and identified as Trees 1 through 7 and evidenced by number and location in Exhibit 2, Subject Tree

Identification and Spacing. They are Lombardy Poplar Trees, defined as a columnar tree. Columnar trees are tall with a limited spread (10 to 15 feet) with very narrow and upright shaped branches. Columnar trees such as the Lombardy Poplar's usually have just one trunk .

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### EXHIBIT 1, TIMELINE INCIDENT SUMMARY

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#### Incident 1

Between 2017 and 2018 Incident 1 occurred and complaint made to the Respondent.

#### Incident 2

April 27, 2020

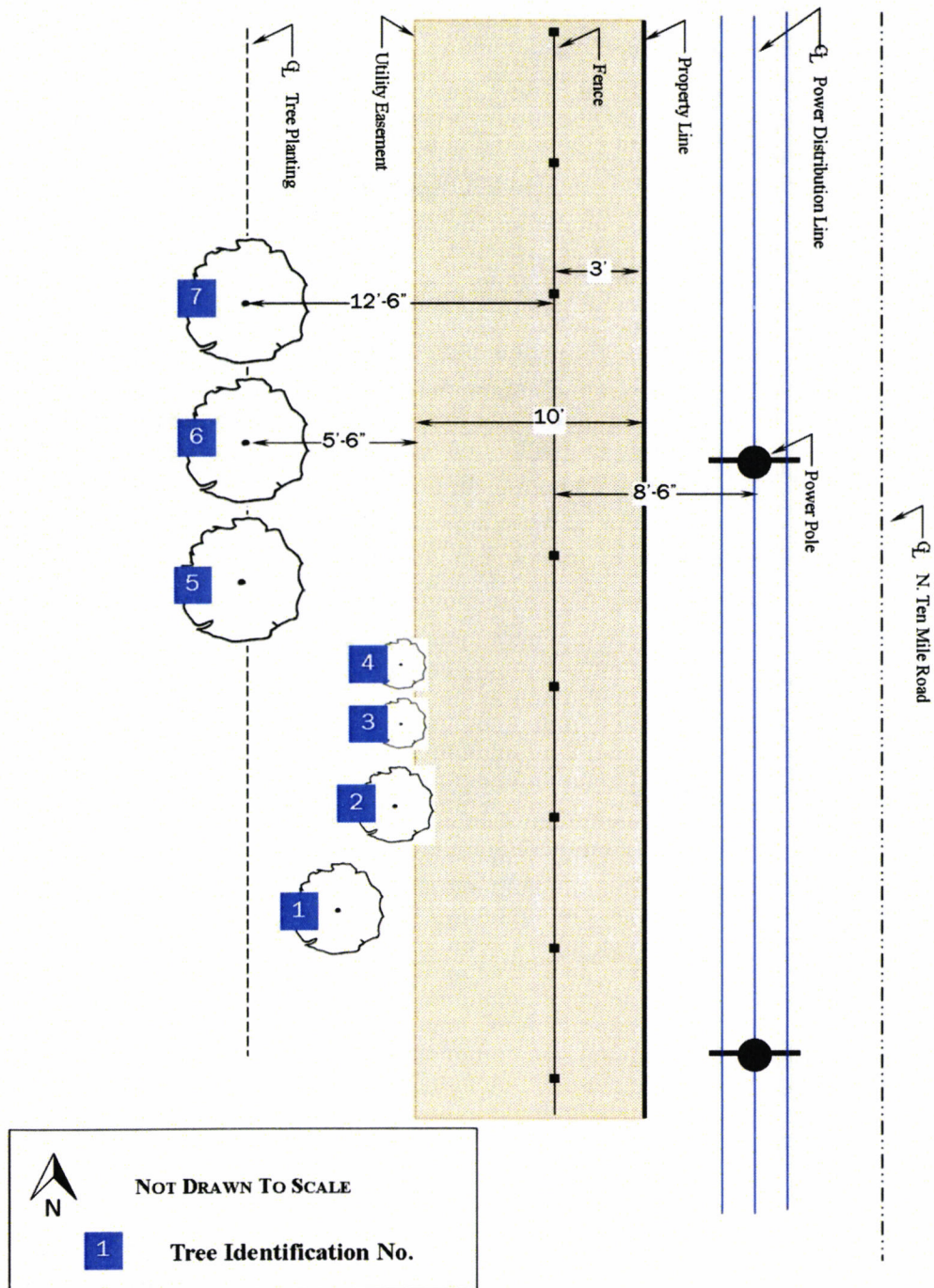
- 12:58 PM Damaged pipe reported to the Complainant by Tim and a coworker with Asplundh.
- 2:03 PM Replacement Pipe ordered from PipeCo by Tim.
- 2:32 PM Complainant called the Respondent's Tree Services Department, spoke to woman who said Supervisor would return call.
- 5:47 PM Complainant received call from Tyler H. A supervisor with the Respondent's Tree Services Department. Meeting set for 8:00 AM. on April 27, 2020.

April 28, 2020

- 8:03 AM Tyler arrives at Property. Tyler claimed no culpability on part of the Respondent. (See conservation comments in Summary and Statement of Facts)
  - 9:01 AM Complainant called PUC and started informal complaint, but asked Mr. Thaden to hold off filing as the Complainant would try and resolve the issue one (1) more with a manager from the Respondent's Tree Services Department.
  - 9:24 AM Complainant called the Respondent's a second time and requested to speak to Manager. Transferred to Payette Idaho Office. Payette manages said he would have Boise manger call the Complainant back. (See conservation comments in Summary and Statement of Facts)
  - 11:09 AM Complainant received call from Bret Van Patten, set appointment for 12:00 that day.
  - 12:02 PM Van Patten arrives at Property. Van Patten claimed no culpability by the Respondent, but offered \$50.00 voucher. (See conservation comments in Summary and Statement of Facts)
  - 12:37 PM Complainant called Mr. Thaden, told him unsuccessful in resolving issues with the Respondent directly and asked him to start informal complaint process.
-



# EXHIBIT 2, SUBJECT TREE IDENTIFICATION AND SPACING



## **Incident 1**

Incident 1 occurred between 2017 and 2018, during the Respondent's prior three (3) year trimming cycle from their current 2020 cycle. During Incident 1, the Respondent topped/cut three (3) Trees in half, identified as Trees 2, 3 and 4. Trees 2, 3, and 4 are now dead. Additionally, they cut 1/3 off the top of Tree 1. The death of Trees 1, 2, 3 and 4 are a direct result of topping and over pruning during Incident 1. They also severely over pruned Trees 5, 6 and 7, using a practice known as lions tailing. This method is not a recommended ANSI A300 pruning practice. This method of pruning causes harm to trees and leads to declining conditions and low survivability. The other Lombardy Trees on the Property have not been pruned by the Respondent and are currently healthy. They also left behind all the debris from the pruning as evidenced in EXHIBIT 10, Images of Debris Left Behind From Incident 1 and 2. Some of the larger pieces of debris were removed by the Complainant at that time as they were left abutting Ten Mile Road and created a hazard.

The Respondent did not provide notice of the tree maintenance /pruning activities of Incident 1. The Complainant called the Respondent and voiced his concerns. During that call, the Complainant stated they had received no notice and that topping and lions tailing their Trees severely damaged them and would lead to declining conditions and eventually snags. The Complainant also stated that the topped Trees will die and become snags because they are single trunk columnar Trees. The Respondent stated there was nothing they could do unless the Trees were dead. The Complainant was told to wait to see if the Trees died and then call back at that time.

## **Incident 2**

On Tuesday April 27, 2020, at 12:58 PM, the Complainant answered a door knock. Upon opening the door the Complainant observed two men who Identified themselves as being with Idaho Power. Luckily for them, the guard dog was secured as the Complainant was expecting a delivery that day. They stated that while trimming our Trees they, "... broke an irrigation pipe...". The Complainant asked the person whom appeared to be in charge, who later identified himself as Tim, why they didn't notify the Complainant before entering the Property and trimming the Trees. Tim looked at the second individual, who later identified himself as "the flagger and notice person" who said, "I don't know why I didn't notice you, I was supposed to do that ...". He then said "... an individual in a passing car even stopped and asked me if I had noticed the property owner. I told him I didn't, and he replied you should." He then went on to say, "I don't know who the man in the car was or why I didn't give you notice."

The Complainant meet them in the field to inspect the damaged irrigation pipe. Upon arriving, the Complainant saw the two men who came to the door and a third man. At that time, the Complainant noticed they had topped three (3) more Trees, Trees 5, 6 and 7 see Exhibit 2A, Tree Identification. The Complainant also noticed that the three (3) individuals did not look like Idaho Power employees as they presented themselves, their vehicle markings did not indicate Idaho Power. The Complainant asked them specifically if they were Idaho Power employees and they replied "we are contractors working for Idaho Power, not employees." The Complainant asked if



any of them had any documentation indicating they were contractors or agents working on behalf or under the authority of Idaho Power? They all replied, "no." The Complainant asked if they had any Idaho Power documentation or policies related to tree trimming services, methods, instruction or anything to that extent? Again they replied, "no." The Complainant asked who their contact person was at Idaho Power? They had no name or depart name to offer.

#### EXHIPIT 2A, TREE IDENTIFICATION



All the Poplar trees to the left of Tree 7, are all healthy and have been untouched by Idaho Power.

The Complainant then asked if they had a contact number or phone number for any supervisor or manager at Idaho Power? They had none to offer but said, "...they could look up Idaho Power's phone number on their cell phones." It was clear they were not Idaho Power employees and at best alleged contractors. The Complainant asked Tim, who is your employer and he stated Asplundh. The Complainant then asked, if they had any identification from Asplundh indicating they were employees and/or had a work order authorizing them to trim the Trees on the Property? They had no identification to offer not even a business card. At this point, the



Complainant considered calling the Sheriff and having them arrested for trespass and destruction of private property. Setting this aside for the moment, the Complainant asked more questions. The Complainant asked Tim what is your title? He replied, "I'm just a tree pruner." The Complainant looked at the third unidentified man and before the Complainant could ask him the same question, he replied, "Hey, don't look at me, I'm new, and I don't know anything, I'm just a helper." The other man already identified himself as the "flagger and notice person". The Complainant then turned to Tim and asked if he had any documentation, memorandums, plans, policies or specific instructions from Idaho Power or Asplundh on how he was supposed to trim the Trees on the Property? He replied, ". . . I have no documentation of any kind." The Complainant then asked Tim how he determined the manner and methods to prune the Trees on the Property? Tim stated, "I prune whatever I think needs to be pruned. If I feel a tree might fall on a power line, I cut it down to the height of the phone lines." He stated earlier that he started cutting the tops off in sections when one of the topped pieces he cut fell on the irrigation pipe, so he stopped work as he could not control the fall of the cut pieces. Implying that if the pipe had not broke he would have continued topping all of the Poplar Trees that day not just 5, 6 and 7.

The Complainant then shifted the subject to the damaged irrigation pipe. The Complainant was concerned due to their lack of identification and paperwork as he didn't know who would be responsible for the damaged irrigation pipe or how this matter would be handled. Tim, the individual who claimed responsibility for damaging the 8" by 30' transfer irrigation pipe identified himself only as Tim and that he worked for Asplundh but had no documentation or identification. The Complainant asked Tim, if you don't know anyone at Idaho Power how are we going to deal with the pipe? Tim stated, "...I'm sorry for damaging your pipe and I'm going to pay for the damages out of my own pocket ..." Tim then stated, "It would not have happened if I had the right equipment ..." Tim describe how the Trees on the Property were well off the road and how his truck only has a 10-foot boom and that he needed a bigger truck with longer boom. Tim went on to state that he called his boss and asked for a truck with a longer boom, but his boss declined and told him to "just get the job done." Tim then said, "The Trees were so far off the road in order to top them I had to hang off the boom." Tim then said, ". . . and this is very dangerous and I could not control the falls. . . and this is how the pipe got broken." He then stated that he was lucky as the other sections that fell missed the pipe. The Complainant thought to himself good news for me, otherwise he would have kept topping all the Poplar trees on the Property. Tim then said, "I'm glad more pipe was not damaged because I looked up the cost of a replacement pipe online before coming to your door."

The Complainant told Tim, the reason the Trees are so far off the road is that they are well outside of the 10-foot utility easement and that they were trespassing and have destroyed private property in the process. The Complainant told them the Property is signed with "No Trespassing" signs and the Complainant would have appreciated being noticed. The Complainant then stated that access may have been denied if they mentioned they were going to top more Trees on the Property. See Exhibit 3, Trespassing And Warning Signage.

Note: Trees 1, 5, 6 and 7 were all mature Trees when topped. The planting location of the Trees was no accident. The Complainant planned all development and landscaping on the property to the last detail, including the landscaping plan. The Complainant considered the Respondent's transmission line, the easement, as



well as other considerations and factors when planting the Poplar Trees and the other trees along the Property frontage. The center of the Trees topped are 5'-6" outside of the utility easement and 21' away from the nearest power transmission line. This is why they were planted in a line 15'-6" west of the property line and outside of the easement. By doing this, the Complainant provided for their maximum spread (15 feet) with a safety margin of 5'-6". At maturity the branches would have a 5'-6" safety margin ( $21' - 15'-6" = 5'-6"$ ) from the nearest power line. Thereby limiting the need for the Respondent to trim these Trees. These facts are evidenced in Exhibit 2, Subject Tree Identification and Spacing and Exhibit 8, Distance From Power lines.

Tim went on to apologies more and restated he would pay for the pipe out of his pocket. The Complainant told him these pipes are expensive and that Idaho Power should pay for the irrigation pipe. Tim said, "If I call my boss and tell him what happened I will get suspended for three (3) days without pay. .. and it's cheaper for me to pay for the pipe." Tim continued to pressure the Complainant to allow him to purchase a replacement pipe and not involve Asplundh or the Respondent. He said, "Involving my company could take considerable time . . . three (3) or more weeks to get a replacement pipe." This statement concerned the Complainant as at that time. Kuna was experiencing unseasonable hot weather and the Complainant had irrigation water coming and scheduled for three (3) days. Secondly, the Complainant could not wait three (3) or more weeks to irrigate the hay field and trees on the Property. Based on Tim's statements, not knowing who had liability in this situation, the heat, irrigation water coming, and the possibility of a three (3) or more week delay the Complainant decided to settle with Tim. The Complainant started to call local irrigation pipe companies from the field to obtain pricing and availability. The Complainant made three (3) calls to different irrigation companies before one was identified as having a pipe in stock, all the other were sold out. However, that company, PipeCo had no 8" transfer irrigation pipe in-stock and they were the last company within 100 miles of the Property. They did have a few pieces of 8" gated irrigation pipe available. They indicated that due to the Covid-19 shutdown they were out of stock on the transfer pipe and they did not know when more would be available in the future and they would have no more this year. They also indicated that they only had 6 pieces of gated pipe left and that was moving quickly.

Note: A transfer irrigation pipe is a solid pipe used to move water with minimal loss. A gated pipe has holes or gates every 30-inches and is used to irrigate via corrugates through the gates. When using gated pipe to transfer water the pipe leaks via the gates. Additionally, the gates are not preinstalled in the pipe which adds additional costs and labor prior to installation.

Due to PipeCo's statements, and the other concerns previously evidenced herein, the Complainant had no other option available but to obtain a gated irrigation pipe. The Complainant's rationale for the gated pipe was that a leaky pipe would work until a proper transfer irrigation pipe became available. The Complainant handed Tim his phone as PipeCo was still on the line. Tim took the phone, ordered the pipe and paid for it with a credit card. The Complainant cannot verify if it was his personal credit card or a company credit card. The gated pipe was delivered later that day. The Complainant paid \$100 to have the broken irrigation transfer pipe removed, disposed of and the installation of a gated pipe.



### EXHIBIT 3, TRESPASSING AND WARNING SIGNAGE



Prior to leaving the field, the Complainant noticed the hay field was covered with tree debris. The Complainant asked Tim to clean up the mess they made while trespassing and to remove the debris from the hay field. The Complainant also asked him to remove and haul off the other debris. Tim told the Complainant that removing the debris and hauling it off was not part of their work, but the responsibility of the Complainant. The Complainant told Tim, he and his wife were disabled and that removal of the debris would be a hardship. The Complainant then asked for a reasonable accommodations request and restated the hardship. The Complainant also mentioned they would have to hire someone to remove broken irrigation pipe and reinstall it. The Complainant also told Tim that some of the debris pieces were too large and long for someone to handle. He was apologetic, but again stated this was not part of their work but they would remove the wood from the hay field and throw it behind the broken irrigation pipe (which is outside of the easement). The Complainant found his terminology, "not part of their work" confusing since they had no documentation or policies related to tree trimming services, methods, instruction or anything to that extent. The Complainant did not know what the Respondent's policy was regarding debris at that time. The Complainant also asked Tim to stop topping trees and that he was going to call Idaho Power immediately regarding the topping and trespass issues. The Complainant told Tim, that he did not want him to get hurt by hanging off his boom or damage any more irrigation pipe or Trees on the Property. The Complainant was also concerned about liability. If Tim fell and was hurt or killed who would be liable? It was obvious by Tim's statements that Asplundh didn't care about their employee's safety.

The Complainant then left the area and immediately called the Respondent at 2:32 PM. After being transferred to four (4) different departments, the correct department was found. A female answered the phone, the Complainant asked if she was with the Tree Trimming Department? She replied, "yes." The Complainant asked to speak to a supervisor, she said, ". . . none were available due to the Covid-19 virus." She said she would have a supervisor call. The Complainant received a call on April 27, 2020 at 5:47 PM from a man who identified himself as, "Idaho Power returning your call". He would not give his name to the Complainant and when



asked he replied, " Why do you need it." It wasn't until the Informal Complaint was filed that the Complainant discovered his name was Tyler H. During the phone call, the Complainant reviewed the issues of Incident 1 and Incident 2 with Tyler, but did not mention the damaged irrigation pipe. He agreed to meet at the Property only if he could do it on his way to work the following morning at 8:00 AM, April 28, 2020. The Complainant agreed to meet with him in the morning and suggested he look at the Trees prior coming to the house, Tyler agreed. That morning, the Complainant waited on his front porch well in advance of the scheduled arrival to secure the guard dog and to observe Tyler's review. The Complainant wanted to observe and document how much time Tyler would spend reviewing the Trees and the Property. Tyler arrived at 8:03 AM, the Complainant observed his arrival and timed his review of the Property and Trees. He spent exactly 1-minute and 59 seconds making his review. (Please see, Procedure Used in Timing Idaho Power Staff Site Review.)

When Tyler arrived at the porch, the Complainant briefly restated the concerns but did not mention the damaged pipe. The damaged pipe was still in the field and easily seen if the site was properly reviewed. After hearing the restated concerns, Tyler swiftly denied any culpability upon the part of the Respondent, including the dead Trees (snags) that died as a result of topping during Incident 1. Prior to his visit, the evening of April 27th, the Complainant researched and found the Respondent's tree trimming policies on their website. The Complainant wanted to be well versed on their policies prior to the meeting. The Complainant asked Tyler why he wasn't noticed? Tyler said, "The trimmers left a brochure on your door prior to starting work". The Complainant told him that he did not receive any notice or brochures from the trimmers. Tyler then stated, ". . . then they would have knocked on your door and noticed you that way." The Complainant told him they did not, and that in fact, the tree trimmers from Incident 2 stated they failed to provide notice and that they had no Idaho Power brochures or documentation of any kind with them. Tyler then stated "... then you would have been noticed a week ago, by our staff." The Complainant told Tyler that he and his wife were both disabled and very rarely leave the Property. The Complainant also said that due to the Covid-19 lockdown that they had not left the Property for almost 60 days as they both have underlying health conditions. The Complainant also told Tyler, they have a guard dog that lets them know when someone is on the Property and that a notice person would not have been able to get out of their car without one of them calling the dog off. The Complainant did not tell Tyler about their hidden driveway alarm or video surveillance. Tyler replied, "Well then, (long pause) we would have sent you an email regarding the matter." The Complainant told him, he received no emails from Idaho Power in the last 6 months except those acknowledging their online payments as the Complainant checked his emails prior to this meeting. The Complainant then stated that according to Idaho Power policies, notice is required. Tyler then said, "So you lied, you did received the notice and brochure." The Complainant told him he did not lie and that prior to his arrival he went to Idaho Power's website and found their policies and read them. What customer service supervisor would call a customer a liar? The Complainant should have stopped the conversation here, but changed the subject wanting to resolve the issues in a timely manner.

The Complainant changed the subject to the debris left behind. The Complainant told Tyler that the debris left behind were not cut into manageable pieces as required by their policy. The Complainant also stated that their policy of leaving debris behind is a hardship as they are disabled. Tyler simply replied, "In my opinion, the debris left was cut to manageable sizes" and



he ignored hardship and disability comment. Then the Complainant stated that he would like Idaho Power to remove the four (4) snags. Referring to Trees 1,2, 3 and 4 and that when removing them to also remove the debris left behind from Incident 1 and Incident 2. The Complainant then told Tyler you cannot top a columnar tree as it is well documented topping trees will severely damage them resulting in a snag within a few years." He quickly replied, ". . . you are wrong" and went on to say, ". . . topping trees is an acceptable practice of pruning and tree management used by Idaho Power and it doesn't harm trees in any manner." He then stated, "Idaho Power had nothing to do with my dead Trees." He then turned and walk away as if the porch was on fire. He didn't even wait for a response to his last comment. Apparently he was in a hurry to get someplace and my questions and so called ignorance was an annoyance to him as he stated several times that he was a licensed arborists, implying the Complainant wasn't and therefore knew nothing about trees.

Immediately after this meeting, at 9:01 AM, the Complainant called the PUC. The Complainant spoke to Mr. Curtis Thaden, who was courteous and professional, something the Complainant had not experienced with the Respondent. Mr. Thaden went over the PUC informal complaint process and took the Complainant information. He said he would start the informal complaint immediately. The Complainant thanked him, and asked him to hold off filling the informal complaint. The Complainant told Mr. Thaden he would contacted the Respondent and ask to speak with a manager in an effort to resolve the issue one (1) more time without involving the PUC. The Complainant then told Mr. Thaden that if he was not successful in the second attempt he would notify him immediately so he could start the informal appeal. Mr. Thaden agreed to wait for the Complainant's callback. He then gave the Complainant his office and cell phone number instructing the Complainant to call him at any time as he was working from home due to the Covid-19 lockdown.

After concluding the call with Mr. Thaden, the Complainant called the Respondent for the second time at 9:24 AM. The Complainant had the same experience as the first call, but finally reached the correct department. A man answered the phone, the Complainant told him he was calling about tree trimming services and asked if this was the correct department. The man replied it was, the Complainant then asked to speak to a manager. The man replied, I am a manager. The Complainant then went over incident 1 and incident 2 in detail including the damaged pipe as the man seemed genuinely concerned unlike the previous calls with the Respondent. The man was courteous, professional and apologetic and agreed to come right over to review the Property and Trees and to discuss options in person with the Complainant. This was the first Idaho Power employee thus far that was professional and didn't insinuate that the Complainant was bothering them with trivial tree concerns. The Complainant gave the man the Property address and asked for his name. He then replied, "I'm sorry, you have the wrong office. I'm located in the Payette office, and that's not my area but I will immediately call the Boise office and have a manager call you right away." The Complainant thanked him, never getting his name and waited for a call from the Boise office.

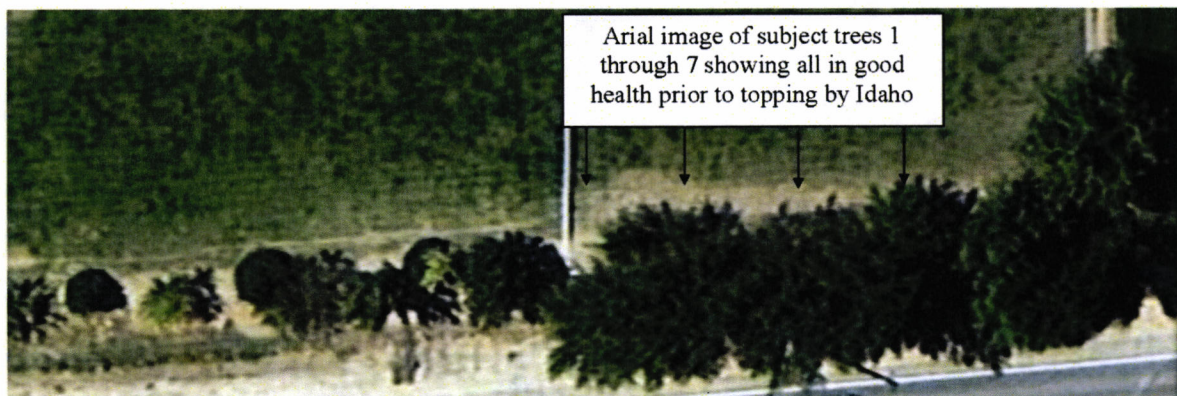


The Complainant received a call from Mr. Brent Van Patten later that day at 11:09 AM. He identified himself as a manager. He said he was in the area and could stop by the Property around noon. The Complainant agreed and suggested he review the Trees prior to coming to the house as he did before with Tyler, he agreed. Like the other appointment, before his arrival, the guard dog was secured and the Complainant waited on the front porch for his arrival. The Complainant observed his arrival at exactly 12:02 PM. He parked his vehicle on Ten Mile Road close to the same spot as Tyler, about 10 to 15 feet away from Tree 1. Van Patten spent a total of 2 minutes and 38 seconds reviewing the Trees before coming to the house. The Complainant's conversation with Van Patten was very similar to that of Tyler, except he immediately called the Complainant a liar regarding the notice issue at the beginning of the conversation. He stated "...you were noticed, I have proof . . . you're a liar." He then went on to tell the Complainant that regarding trespass, "You have no property rights and Idaho Power can enter your property, any part of your property, any time they want without your permission or notice." this was going nowhere so the Complainant asked about the tree topping practice as the Complainant knew it was against the Respondent's policies to top trees and not an acceptable practice as defined by ANSA A300. Van Patten boldly stated, "Idaho Power has every right to top your Trees and that willow trees do very well when topped, so topping your willows would have no impact on them." The Complainant then mentioned that Idaho Power's policies states you don't top trees. Van Patten knew of no such policy. The Complainant told him, Tim with the tree trimming company indicated that he was not an arborist nor did not mention any specific training when questioned. The Complainant then stated, it is my understanding that Idaho Power only uses highly trained professionals, arborists or qualified contractors to prune trees. The Complainant went on to state that only approved pruning practices such as directional pruning, side clearing or side clearing L cuts as outlined in their policies and ANSI A300 are approved methods and topping was prohibited. He simply replied, "He (referring to Tim) had better have been trained or there will be trouble." It appeared Van Patten didn't understand the tree trimming terminology mentioned by the Complainant. He also didn't know the difference between a willow tree and a poplar tree, two very distinct and different trees. Only poplar Trees had been topped not any willow trees. Since he seemed confused about the terminology mentioned by the Complainant and the species of the topped Trees the Complainant asked if he was an arborist, Van Patten replied he was. (The Complainant has subsequently discovered that Van Patten is not a manager nor an arborist.) He went on to tell the Complainant that the Trees died because they were in poor health due to lack of water and poor management on the Complainant's part. The Complainant told Van Patten that a photograph was available showing the Trees were healthy prior to their pruning and topping before Incident 1, see Exhibit 4, Aerial Photograph Of Subject Trees, 2017. He did not want to see the photo nor did he care he had made his decision. It was obvious that during his review he didn't notice the broken irrigation pipe, the hay field, or the irrigation ditch running along the Tree line used to water them. In his 2-minutes and 38 second review he made all of his observations and drew all his conclusions. He made his assessment, the Complainant was wrong and a liar, and the Respondent had no culpability.



Note: The Complainant's field is bermed so it can be flood irrigated. The hay field and Trees are flood irrigated weekly or every other week with 3 to 6 inches of water over a 3-day period, 2-days on weekly watering. This irrigating practice has been used on the Property since it was purchase by the Complainant. The hay fields and trees on the property are irrigated every two weeks or more often as needed depending on the heat. The Complainant has Irrigation paperwork to confirm these facts.

#### EXHIBIT 4, AERIAL PHOTOGRAPH OF SUBJECT TREES, 2017



Prior to leaving, the Complainant mentioned he had called the PUC. When hearing this, Van Patten stated that some of the debris left in the field was not left in manageable pieces and he offered to have the crew come back and cut them down with an added condition to top more trees. He stated, "In my opinion, . . . they did not prune aggressively enough . . . and needed to do more . . ." He reaffirmed that Idaho Power would not remove the dead Trees as it was not their fault they died. But he did offer one (1) \$50.00 voucher in compensation. The Complainant knew this offer was in conflict with the Respondent's policies and that the voucher amount didn't even cover the original cost of one (1) Tree. The Complainant told Van Patten the initial cost for one (1) Tree was over \$80.00 many years ago and that they came from Washington State. The Complainant also stated that the cost mentioned didn't including shipping or installation. He replied, "That's our policy, \$50.00." The Complainant asked him if he thought that was a fair and reasonable amount for a large growth tree. Van Patten replied, "Paying for the true value of a tree would be too costly for Idaho Power and its rate payers. The Trees were topped as the posed a hazard to the power line and our customers."

Immediately following Van Patten's departure, the Complainant called Mr. Thaden at 12:37 PM and told him to proceed with the informal complaint.



## Applicable Provisions

### 1. Right of Way/Easements

*IDAHO PUBLIC UTILITIES COMMISSION TARIFF NO. 29  
Idaho Power Company I.P.U.C. No. 29, Tariff No. 101 Original Sheet No,  
Section 7. Rights of Way.*

*"The Customer shall, without cost to the Company, grant the Company a right of way for the Company's lines and apparatus across and upon the property owned or controlled by the Customer, necessary or incidental to the supplying of Electric Service and shall permit access thereto by the Company's employees at all reasonable hours. The Customer shall also permit the Company to trim Trees and other vegetation to the extent necessary to avoid interference with the Company's lines and to protect public safety."*

*"Idaho Power has easements to the property that allow us to maintain our lines. While we do not need permission to prune, we do like to notify our customers when access to their Trees or property is necessary for the safety and reliability of our power lines."*

*"Idaho Power is obligated to keep lines clear to provide power to the community and our customers. We can, as a last resort, pursue legal means."*

The policies shown above are ambiguous, arbitrary and capricious. Tariff No. 101, section 7 is in violation of several state statutes. It implies the "Company" can enter private property any time they want". . . *thereto by the Company's employees at all reasonable hours.*" In fact, Idaho Statutes have only granted the Respondent authority to enter private property without the expressed permission of the landowner in the event of an emergency. The Idaho Statute, states emergency purposes only, *"... power company personnel fixing downed power lines;"* The Idaho Statute also states, *"company personnel"* which by definition, excludes 3rd party contractors. It specifically states that only, *" power company personnel "* can enter property and only during an emergency. Tree trimming for line maintenance work does not represent an emergency or *"downed power lines. "*

#### 8-1A-1: DEFINITIONS:

*EASEMENT: A right of use, falling short of ownership, and usually for a certain stated purpose, as defined by Idaho Code section 50-1301.*

## PLATS AND VACATIONS

### 50-1301. DEFINITIONS.

(2) *Easement: A right of use, falling short of ownership, and usually for a certain stated purpose;*

## TITLE 50, MUNICIPAL CORPORATIONS CHAPTER 13, PLATS AND VACATIONS

50-1302. *DUTY TO FILE. Every owner creating a subdivision, as defined in section [50-1301](#), Idaho Code, shall cause a land survey and a plat thereof to be made which shall particularly and accurately describe and set forth all the streets, easements, public grounds, blocks, lots, and other essential information, and shall record said plat. This section is not intended to prevent the filing of other survey maps or plats. Description of lots or parcels of land, according to the number and designation on such recorded plat, in conveyances or for the purposes of taxation, shall be deemed good and valid for all intents and purposes.*

## TITLE 67, STATE GOVERNMENT AND STATE AFFAIRS CHAPTER 65, LOCAL LAND USE PLANNING

67-6518. *STANDARDS. Each governing board may adopt standards for such things as: building design; blocks, lots, and tracts of land; yards, courts, greenbelts, planting strips, parks, and other open spaces; Trees; signs; parking spaces; roadways, streets, lanes, bicycleways, pedestrian walkways, rights-of-way, grades, alignments, and intersections; lighting; easements for public utilities; access to streams, lakes, and viewpoints; water systems; sewer systems; storm drainage systems; street numbers and names; house numbers; schools, hospitals, and other public and private development. Standards may be provided as part of zoning, subdivision, planned unit development, or separate ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided in section [67-6509](#), Idaho Code.*

*A plat thereof to be made which shall particularly and accurately describe and set forth all easements. Easements for public utilities Standards may be provided as part of zoning, subdivision, planned unit development, or separate ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided in section [67-6509](#), Idaho Code.*

Furthermore, Tariff 101, Section 7 implies the right to enter all private property without exception. ". . .Customer shall, without cost to the Company, grant the Company a right of way



for the Company's lines and apparatus across and upon the property owned or controlled by the Customer, necessary or incidental. . ." This exception is in violation of State Statutes, Ada County Ordinances and several Federal and State Constitutional Rights. This section also uses the wording, ". . .the Company. . ." which is defined as Idaho Power not a third party contractor.

Secondly, the terms "*necessary or incidental*" are arbitrary and capricious and not defined. The terms, "*necessary or incidental*" are clearly not defined as emergency or requiring immediate action but rather necessary or incidental action. Necessary or incidental actions do not authorize Idaho Power to violate private property rights or authorize trespass. Idaho Statutes have clearly defined access to private property, by power companies, outside of an easement, as only being allowed to repair a downed power line in an emergency situation.

Idaho Statutes and Ada County Ordinances define Right-of-way as easements which are defined as, "(2) Easement: A right of use, falling short of ownership, and usually for a certain stated purpose;" the Respondent's "*necessary or incidental*" language doesn't provide a specific stated purpose just something that's "*necessary or incidental*." The easement for the Property is 10-feet wide and runs parallel to Ten Mile Road and the Property line as evidenced in Exhibit 5, McClure Subdivision Plat. The 10-foot easement is the only portion of the Property where the Respondent would be allowed for maintenance work without property owner consent. This easement doesn't transfer to 3rd party contractors as they are not the "*Company*" or a public utility. Transferability is not granted by Idaho Statutes or Tariff 101, Section 7.

A Right of Way or Easement is also defined as a privilege to pass over the land of another, whereby the holder of the easement (a public utility) acquires only reasonable and usual enjoyment of the property and the owner of the land retains the benefits and privileges of ownership consistent with the easement. State statutes and ordinances have clearly defined easements and enjoyment is not granted to the entire Property as claimed by Van Patten, but confined to the easement.

A right of way is a strip of land upon which power companies construct power lines; in this context, the term refers to the land or right of way itself, not the right of passage over all property. No power lines or apparatus lie within the Property easement or the Property. The easement is for maintenance work only and runs parallel to N. Ten Mile Road and adjacent to the front Property boundary. The Trees on the Property were planted outside of that easement, 5-feet 6-inches to be exact as evidenced herein. The Respondent had no permission given or implied by the Complainant to enter the Property to top Trees or damage irrigation piping. They ventured outside of the prescribed easement and damage personal property and Trees.

The Respondent has a policy which states, "*Idaho Power has easements to the property that allow us to maintain our lines. While we do not need permission to prune, we do like to notify our customers when access to their Trees or property is necessary for the safety and reliability of our power lines.*" This policy statement acknowledges the Respondent's understanding of property rights and easements located on private property. However, some of the language is arbitrary and capricious. The specific ambiguity is, "*we do not need permission to prune*" and "*we do like to notify our customers when access to their Trees or property is necessary.*" This language has been interpreted by the Respondent's staff that they have the right to enter private



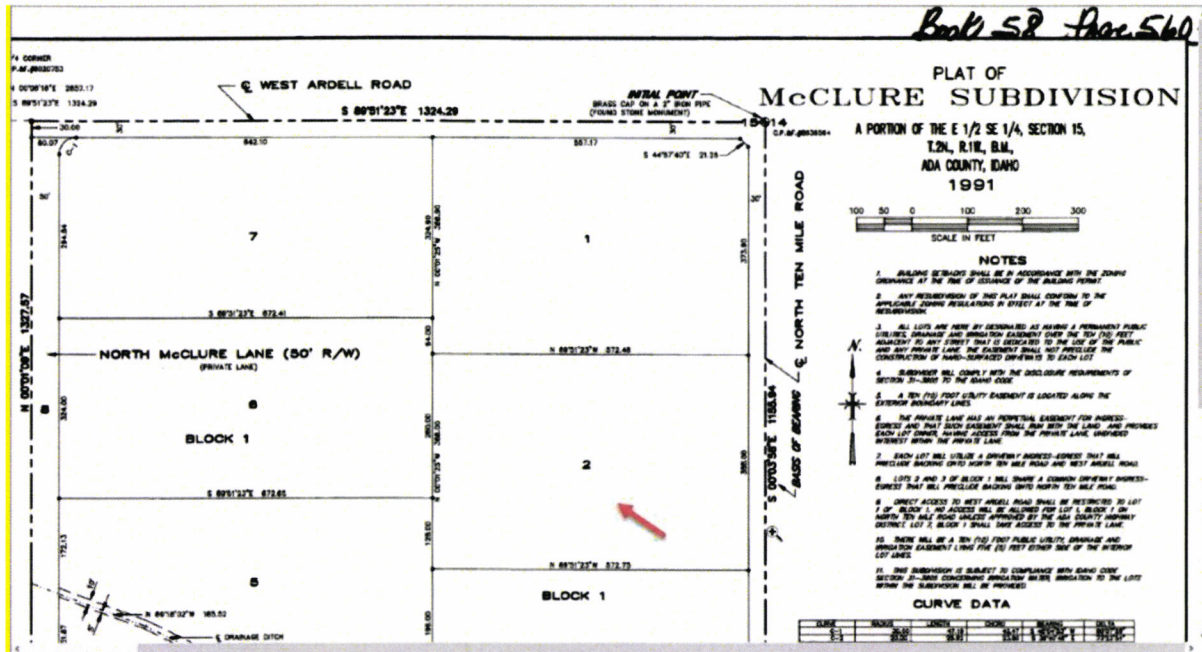
property outside of an easement without permission. Again Idaho Statutes have already identified the only exception as a downed power line not tree trimming. This language, ". . . *like to notify our customers when access to their Trees or property is necessary. . .*" does not diminish the fact they have no right to enter private property outside of an easement. This policy also states "*their Trees*" implying the word "*Trees*" being capitalized designating ownership by the "*Company*," or is the Respondent implying through this language that they own the "*Trees*" in or along an easement. The fact that the Respondent, "*like to notify*" does not grant or imply permission to trespass or ". . . *access to their Trees or property. . .*" The policy should have been written to read: We do not need permission to prune Trees within the easement, however, we would require permission work outside of the easement. If work outside the easement is planned or required, the Company will request written approval from the property owner at the time of noticing and prior to any commencement of work. If the property owner declines permission, the Company may seek a judicial remedy.

Furthermore, the policy suggests that by noticing they can do what they want on the Property without regard to private property rights or trespass issues. The policy states. ". . . *we do like to notify our customers when access to their Trees or property is necessary. . .*" They are attempting to circumvent private property rights and statutes by implying that by "*notify our customers*" somehow relieves the Respondent from trespass laws as stated by Van Patten. Permission or consent to enter private property cannot be granted through a notice or door hanger. It must be expressed verbally or in writing by the property owner. This policy also fails to define what "notify" means. According to Tyler and Van Patten a simple (dumbed-down) door hanging brochure granted the Respondent consent to enter private property, including the Complainant's Property. Furthermore, their policy only addresses the "*Company*" and their right to access, there is no mention of 3rd party contractor having any rights.

In conclusion of this section, the Complainant maintains the Respondent's policies and Tariff 101, Section 7 are arbitrary and capricious with no consideration for private property rights and they violate State Statutes. The Respondent only has access to easements for a certain stated purposes as defined by Idaho Statute. Falling short of ownership, easement access can be denied by the property owner. In such an event, the Respondent ". . . *can, as a last resort, pursue legal means.*" The Respondent understands this, and in a separate policy states this fact. Without notice, a property owner has been denied their due process right under the 14th Amendment and State Constitution. The right to deny access. A simple brochure left on a door doesn't imply or grant permission to enter private property. Assuming this is their method of "notify" as their method is not specifically defined in any of the Respondent's policies. Tree trimming maintenance does not constitute an emergency whereas a State Statute has granted an exception. But that exception only applies to the Respondent not 3rd party contractor. Failure to gain property owner permission to venture outside a prescriptive easement is trespass.



## EXHIBIT 5, McClure Subdivision Plat



Subject Property Lot 2 location evidenced by red arrow.

## 2. Trespass

### IDAHO PUBLIC UTILITIES COMMISSION TARIFF NO. 29

Idaho Power Company I.P.U.C. No. 29, Tariff No. 101 Original Sheet No, Section 7.  
Rights of Way.

"The Customer shall, without cost to the Company, grant the Company a right of way for the Company's lines and apparatus across and upon the property owned or controlled by the Customer, necessary or incidental to the supplying of Electric Service and shall permit access thereto by the Company's employees at all reasonable hours. The Customer shall also permit the Company to trim Trees and other vegetation to the extent necessary to avoid interference with the Company's lines and to protect public safety."

"Idaho Power has easements to the property that allow us to maintain our lines. While we do not need permission to prune, we do like to notify our customers when access to their Trees or property is necessary for the safety and reliability of our power lines."

*"Idaho Power is obligated to keep lines clear to provide power to the community and our customers. We can, as a last resort, pursue legal means."*

The Respondent went outside of the 10-foot easement without the Complainant's permission and destroyed private property and committed Trespass with Malicious Injuries to Property. Exhibit 6, Property Line Layout and Distances evidences the topped Trees were 5'-6" outside of the prescribed 10-foot easement. The broken irrigation pipe was 11'-6" beyond the prescribed 10-foot easement.

TITLE 18, CRIMES AND PUNISHMENTS, CHAPTER 70  
TRESPASS AND MALICIOUS INJURIES TO PROPERTY

*(c) Any other person with a legally prescribed right to enter or remain upon the real property in question.*

*(7) Examples of the exclusions in subsection (6) of this section include, but are not limited to: power company personnel fixing downed power lines; acting pursuant to the provisions of chapter 11 or chapter 12, title 42, Idaho Code.*

Idaho trespass laws are very specific, and Tariff 101, Section 7. Rights of Way is in violation of Title 18, Crimes And Punishments, Chapter 70, Trespass And Malicious Injuries To Property. Only power company personnel are exempt from trespass in the event of an emergency. Power company personnel can trespass only to *"fix downed power lines."* Tree pruning maintenance does not exempt the Respondent from trespass as evidenced herein. Secondly, Title 18, Chapter 70 specifically state *"power company personnel"*, not 3rd party contractors are exempted. The Idaho Public Utilities Commission Tariff No. 29 and State Statutes do not grant access privileges to 3rd party contractors only the "Company," which is defined as Idaho Power.

In conclusion of this section, the Complainant maintains the Respondent and their alleged 3rd party contractor unlawfully entered the Property without permission or the knowledge of the Complainant. Whereby an irrigation pipe and Trees (private property) were damaged or destroyed while engaging in Trespass with Malicious Injuries to Property. Policies aside Trespassed with Malicious Injuries to Property was committed and the Respondent is responsible for damages.

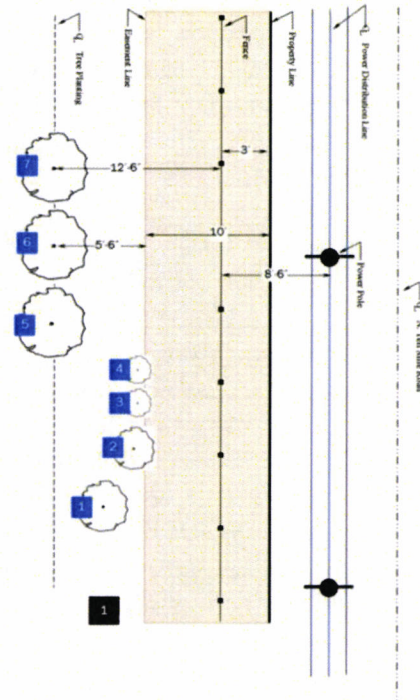
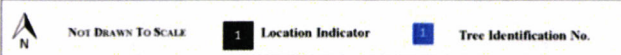


## EXHIBIT 6, PROPERTY LINE LAYOUT AND DISTANCES

### PROPERTY LINE LAYOUT

Highlighting Fencing Setback From Property Line

LOOKING SOUTH, Showing  
Neighbors fence located on  
property line, and my fence  
back 5 feet from property line.



### 3. Tree Trimming Policies

IDAHO PUBLIC UTILITIES COMMISSION TARIFF NO. 29 Idaho Power Company  
I.P.U.C. No. 29, Tariff No. 101 Original Sheet No. i IDAHO Issued by IDAHO POWER  
COMPANY Issued per Order No. 30508 John R. Gale, Vice President, Regulatory Affairs  
Effective - March 1, 2008 1221 West Idaho Street, Boise, ID RULE C, SERVICE AND  
LIMITATIONS (Continued) . Point of Delivery Service Requirements (Continued)

#### Section 7. Rights of Way.

The Customer shall also permit the Company to trim Trees and other vegetation to the extent necessary to avoid interference with the Company's lines and to protect public safety.

Tariff 101, Section 7, states, "The customer shall permit the Company to trim Trees. . . to the extent necessary. . ." This wording is arbitrary and capricious and conflicts with other Respondent policies in addition to infringing upon private property rights. The word "Company" is capitalized and specifically refers to Idaho Power, the Company. Nowhere in this Tariff is the term "Company" defined to mean anything other than Idaho Power. 3rd party contractors are not defined as "Company." by any definition therein. Their wording, "to the extent necessary" is arbitrary and capricious. The Respondent is a Quasi-Public Corporation and required to develop ethical standards and administrative regulations that comply with federal and state laws. In addition to providing responsible development, planning and execution strategies that provide assurances and protection of private property rights through reasonable standards and policies. Tariff 101, Section 7 and other policies fail to meet these standards. Their policies make claim and state assurances to their customers, such as how trees will be properly pruned to maintain safe and reliable power. They even provide specific tree trimming diagrams of approved tree trimming methods, but these methods are not being applied by the Respondent. These policies are ambiguous, arbitrary, capricious and poorly enforced. Policies such as, "*Idaho Power prunes Trees to clear our power lines, ensuring the safety and reliability of the energy we deliver. Trees and limbs that contact our lines can cause power outages and dangerous situations for homes, motorists and pedestrians, children climbing Trees and our linemen.*" It further states that "*Idaho Power has been recognized for decades for our line clearing work by the National Arbor Day Foundation. The Tree Line USA Utility award commends the company for caring for the health of Trees while removing branches and limbs growing too close to power lines.*" Yet another policy states, "*We clear the Trees along our lines on a regular maintenance cycle. The shape, size and growth rate of Trees affect how often they need pruning. Generally, our crews prune to create clearance to last for at least three years and to avoid problems with snow overloading branches in winter.*"

The Complainant will break these policies down starting with their pruning methods policy. If you continue to reading their pruning policies they state, "*Directional pruning allows us to train the tree to grow away from power lines by removing only the branches that might contact the lines. By selectively pruning the tree's branches instead of pruning the entire top, much of the tree's natural form is retained.*". The Respondent has provided images of approved pruning methods to their customers as evidenced in Exhibit 7, Idaho Power Tree Trimming Policy Examples. Their policies also state, "*This practice is better for the health of the Trees.*" and that, "*It is also more cost effective because it doesn't have to be done as frequently.*" They also reinforce these policy statements and reassurances to their customers by stating, "*The U.S. Forest Service and International Society of Arboriculture recommend directional pruning.*" and that "*only directional pruning will be used, instead of pruning the entire top . . .*" as provided by their policies and compliance with those standards evidenced in Exhibit 7, Idaho Power Tree Trimming Policy Examples are the best methods for the health of trees in accordance with ANSI A300 standards.



## EXHIBIT 7, IDAHO POWER TREE TRIMMING POLICY EXAMPLES



The pruning methods evidenced herein and in Exhibit 7, Idaho Power Tree Trimming Policy Examples were not used when trimming the Trees on the Property as they were topped and over pruned. The policy examples evidenced in Exhibit 7, Idaho Power Tree Trimming Policy Examples do not include topping trees. According to Van Patten, a proclaimed Idaho Power Manager and arborist, he stated that topping was an acceptable standard and a policy used by the Respondent. In fact, he emphatically proclaimed the Respondent had the right to top the Trees on the Property outside of the prescribed easement.

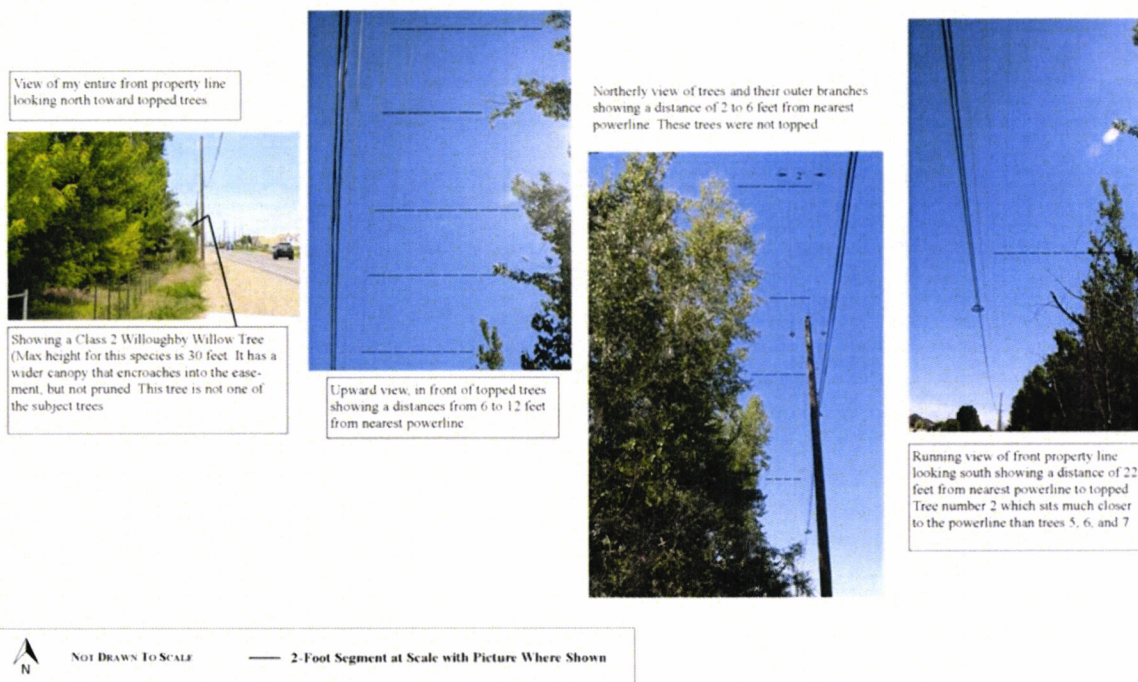
When questioned by the Complainant, Tim, Tyler nor Van Patten were aware of the Respondent's no topping policies or the ANSI A300 standards which strongly discourages tree topping due to the impact and survivability of topped trees. Tim only stated his policy, top them below the phone line. Tyler stated it was an acceptable practice used by Idaho Power. While Van Patten doubled down and reaffirmed that Idaho Power can do whatever they want to the Trees on the Property. Their comments regarding topping trees along with the fact that they topped Trees on the Property evidence the Respondent's policies are arbitrary, capricious, not being applied, enforced or monitored for compliance.

In review of another policy, regarding limbs and branched touching energized lines their policy states, ". . . *branches and limbs growing too close to power lines.*" This policy statement is arbitrary and capricious as it does not definition the wording "too close." What is too close? Another policy states, "*Trees and limbs that contact our lines can cause power outages. . .*" Based on these two policies and the arbitrary and capricious wording one could interrupted these policies to mean branches and limbs will be trimmed so they do not touch power lines, not to close nor to far, but just enough.



## EXHIBIT 8, DISTANCE FROM POWER LINES

### IMAGES HIGHLIGHTING DISTANCE FROM POWERLINES



How far back from the power line is considered "*growing too close*" is a tree limb or branch 1-foot or perhaps 21-feet "*growing too close*." This policy is arbitrary and capricious and Exhibit 8, Distance From Power lines (each dash mark shown in Exhibit 8 references a 2-foot length or measurement and that measurement is in scale with the image) evidences this point. The Poplar Trees and their limbs along the front Property are from 2-feet to 10-feet away from the nearest power line and 21-feet from the center of the Tree trunks topped to the centerline of the closest power line. Apparently, the pruner(s) had a different interpretation of the Respondent's policies and the wording "*too close*". Trees were topped and over pruned that were 21-feet away from the nearest energized power line.

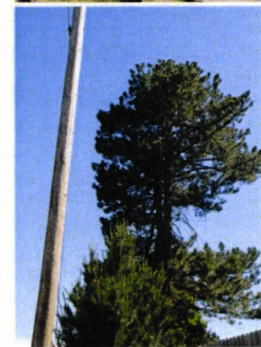
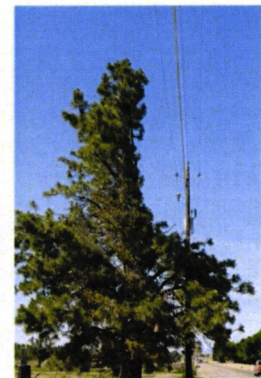
Exhibit 9, Images of Pruned Trees will further evidence the Respondent's arbitrary and capricious policies. Just south of the Property on Ten Mile Road, trees were pruned by other Asplundh crews. This work was observed by the Complainant and the work was completed during same time frame in April as the Trees on the Property. The photos in Exhibit 9, Images of Pruned Trees evidence the distanced from the power line to the pruned trees. The photos evidence these trees were pruned at various distances from the power line and no trees were topped. Some of the trees evidenced even exceeded the height of the power line. The trees



evidenced in Exhibit 9, Images of Pruned Trees are all sited within the easement and some abut the power line. None were topped even those exceeding the power line in overall height. Many of the trees branches and limbs are very close to the power line. Based the facts exhibited herein, what rational was used by the Respondent to justify topping the Trees on the Property. The topped Trees were well away from the nearest power line (21-feet) and well outside of the easement.

## EXHIBIT 9, IMAGES OF PRUNED TREES

**IMAGES OF PRUNED TREES LOCATED ON TEN MILE ROAD SOUTH OF THE SUBJECT THAT WERE PRUNED SAME THE SAME TIMEFRAME WEEK**



Please note, many of the trees shown are taller than the powerlines. None of the trees shown were topped many of them are in close proximity to the powerlines, approximately 2-feet or closer. The images show directional pruning. All trees are within the 10-foot utility easement. However none of the trees were topped and no topped trees could be located on Ten Mile Road, other than the subject trees outlined in the Formal Complaint located at 2173 N. Ten Mile Road.

As evidence herein, Tim believed the Trees needed to be topped due to their height, "I prune whatever I think needs to be pruned and if I feel a tree might fall on a power line I cut it down to a point around the phone lines." Tyler thought the Trees were pruned properly, while Van Patten thought they needed more aggressive pruning and the crew need to come back to prune more. This evidence further demonstrates the arbitrary and capricious nature of these policy.

Another policy states, *"Each crew has at least one certified arborist or person who has completed an advance course in arboricultural training."* While another policy states they, *"... hire qualified line-clearing contractors to keep our power lines clear."* As evidenced herein, Tim



did not mention any special training and stated he was not an arborist. How does the Respondent define training? What excused Tim's crew from completing, *"an advance course in arboricultural training?"* When Van Patten was asked this question he could neither confirm nor deny Tim's crew was trained or even qualified. He just stated that, "He had better have been trained," referring to Tim. Once again as evidenced herein, the Respondent's policies are not being enforced nor audited for compliance by their staff. What benefits and protections do these policies provide their customers if they fail to train, enforced or audit them? Who are *"their crew"* as mentioned in their policies and how is that term defined? Does it refer to Idaho Power crews, as some policies clearly state, *"Company"* and *"crews"* implying that the Respondent does the line clearing work while one (1) policy mentions the word *"contractor."* These policies and wording are arbitrary and capricious and serve only to mislead their customer's with a false sense of security and assurance of proper tree pruning and workmanship. No one the Complainant spoke with including some with the PUC were aware that the Respondent was using 3rd party contractors for line clearing purposes. How about you Commissioners, were you aware of this practice?

Another policy states, *"These crews create necessary line clearances while considering each tree's species, size and natural shape."* How does the Respondent consider *"species, size and natural shape"*, where are their policies and training documentation to verify this policy and how *"species, size and natural shape"* are considered? If the Respondent's crews are trained, what standards and guidelines were used to aid them in determining how to prune trees based on *"species, size and natural shape."* In the 2002, while the Complainant was developing the landscaping plan for the Property, he noticed that the local nurseries were limited in their varieties and species of trees. The Complainant wanted a greater variety planted on the Property than locally available (100 trees and over 40 species were proposed for planting). Therefore, the Complainant had to purchase trees from out of state. These trees were not common to the Boise area, including the Trees killed by the Respondent. Does the Respondent's training include examples of all *"tree's species, size and natural shape"* as claimed in their policy or just those species common to the Boise area? Likely not, this is just another example of a poorly written policy designed to provide assurances to the Complainant's customers suggesting their trees will be properly pruned.

Another policy states, *We do not "round" Trees over because it's not good for the health of the Trees. We follow the ANSI A300 tree pruning standard and use a method of pruning called directional pruning. This method is endorsed by many in the tree-care industry as being the best technique for the health of the tree. Directional pruning removes each limb where it joins another limb or at the trunk. This procedure is different from "rounding" Trees over, where limbs are cut at random points, normally leaving unhealthy "stub" cuts. Directional pruning involves cutting a limb back to another limb so future growth is directed away from power lines. With the directional technique, tree growth causes minimal impact to public safety and electric service."*



Tree practice of tree topping is the removal of the whole tops of trees including large branches and/or trunks from the tops of trees. The practice of Topping is also commonly known and describe as: Rounding, Rounding Over, Heading, Hat-Racking and Tipping. If the Respondent's policies state, "*We do not "round" Trees over because it's not good for the health of the Trees.*" and that they adhere to ANSI A300 tree pruning standards, then why were the Trees on the Property topped?

Has evidenced herein, the ANSI A300 standards clearly states in an Advisory Notice within the standards that, "*Certain pruning practices are not acceptable and can injure trees such as: Topping and Lion's Tailing . . .*" Both of these practices were used on the Property during Incident 1 and Incident 2. Both Tyler and Van Patten stated that topping trees was a common and acceptable pruning practices in the industry and used by Idaho Power. Both went on to stated topping had no impact on the health or survivability of a tree. Idaho Power policies clearly state "*topping*" and "*Rounding*" are unacceptable, so why is there a disconnect between these policies and the Respondent's staff? The ANSI A300 standard is evidenced herein in Section 8. Contractor Training, Training Verification, Certification and Identification.

The Complainant has inserted an article to further evidence topping or rounding trees is not an acceptable practice as claimed by the Respondent's staff and that it does in fact cause harm to trees. This article was written by award winning author Joe Lamp'l. The article discusses the impact of tree topping. Below are some excerpts from his article with key points underlined:

***Tree Topping – What You Don't Know is Killing Your Trees, By Joe Lamp'l***

Source: <https://www.growingagreenerworld.com/tree-topping-what-you-dont-know-is-killing-your-Trees/>

*Topping is considered the most harmful tree pruning practice known - In fact, it's regarded as such a serious crime against nature, one organization's major efforts over the past two decades has been to stop this "torture and mutilation."*

*Topping Stresses Trees - When a tree is topped, up to 100% of the leaf bearing crown is removed. As leaves are the food source for any tree, the absence of this food supply can temporarily starve the tree. As a defensive action, the starving tree responds by rapidly sending out multiple shoots from latent buds below each cut. This action is the tree's survival mechanism to put out a new flush of leaves as soon as possible. Moreover, if the tree does not have sufficient stored energy reserves to respond in this way, it will seriously harm the tree, even leading to its premature demise.*

*Topping is Expensive - Eventually, when the tree dies because of the effects of the cumulative stress and damage, even more money will likely be spent to remove it.*



The Respondent's policies acknowledge topping as being unhealthy for trees as evidenced herein. So what justification does the Respondent have for topping the Trees on the Property and ignoring their policies?

Note: The Complainant has used the term over pruning throughout this Complaint. Over pruning is defined as removing too much foliage from the upper canopy of a tree, resulting in over exposing bark tissue to the sun. This practice causes damage to the bark and the underlying vascular system known as "sunscauld." Smooth-barked trees, such as Lombardy Poplar are more susceptible to sunscauld injury, which further reduces a tree's health and longevity from over pruning. Over pruning also damages the tree's foliage by limiting food production through photosynthesis. When too much is removed the tree starves. Lombardy Poplar don't have a typical canopy. They have a central trunk or column with small minor limbs with very small branches that are spaced far apart stemming from the trunk growing vertically and parallel to the trunk. An open canopy tree has a low central trunk with several lateral spreading limbs and branches to protect the tree from the sun and provide food. Removing some limbs and branches from an open canopy trees has less of an impact upon the tree as other limbs and branches protect the tree from the sun and provide food, unless of course the tree is topped. The Trees on the Property had too many limbs removed and/or were topped which caused their decline and sunscauld. This stress of over pruning is evidenced as it caused an inordinate amount of epicormic sprouting which diminished the Trees growth of the Trees tops and limbs.

Another pruning policy states, *"Sometimes it's necessary to remove a tree that has become a hazard to the public or the energy system. If a tree or Trees are classified as hazardous, Idaho Power will remove the tree and discuss replacement options with the property owner. Customers may plant a new tree in the same spot only if they select a low-growing, or Class I tree. Class I Trees grow to a maximum height of 25 feet."*

The policy is arbitrary and capricious as the wording *"hazard to the public or the energy system"* is not defined. How is "hazard" or "hazard to the public" or "hazard to the energy system." defined? What is the policy and process to determine a tree is hazardous? Tim, indicated that the Trees, being over 40-feet in height were a hazard and his justification for topping them. Tim, according to Idaho Power policies is supposed to be a *"qualified line-clearing contractor and a certified arborist or person who has completed an advance course in arboricultural training."* Do these qualifications qualify him to arbitrarily classify trees as hazardous?

In conclusion of this section, the Complainant maintains the Respondent's tree trimming policies are arbitrary and capricious with no consideration for private property rights. The Complainant has evidenced numerous facts and statements made by the Respondent's staff that support these conclusions. Photographic evidence has also been introduced that also support these conclusions. The fact that seven (7) Trees were topped and over pruned on the Property also evidence those conclusions. The evidence contained herein, demonstrates the Respondent's failure to develop ethical standards and policies in addition to provide proper training. They failed to comply with, enforce and monitor their own policies and 3rd party contractors thereby jeopardizing the Complainants property and property rights. The Respondent's policies are misleading and



provide a false sense of security by implying the Respondent crews are Idaho Power employees and that the Respondent's employees perform the tree line maintenance work. The Respondent's employees are perceived by their customers to be better trained, held to higher standards and provide responsible liability assurances while 3rd party contractors do not.

#### 4. Due Process - Takings

*"If it is clear that pruning killed the tree, Idaho Power will cut it to a stump and provide the customer a voucher to replace the tree"*

*"Sometimes it's necessary to remove a tree that has become a hazard to the public or the energy system. If a tree or Trees are classified as hazardous, Idaho Power will remove the tree and discuss replacement options with the property owner. Customers may plant a new tree in the same spot only if they select a low-growing, or Class I tree. Class I Trees grow to a maximum height of 25 feet."*

The Complainant has previously discussed the word *"hazard"* *"hazardous"* and *"determined to be a hazard"* in this Complaint. Now the Complainant would like to address specifically their policy wording, *"voucher to replace the tree"* and *"Replacement Options"* and their policy, *"Customers may plant a new tree in the same spot only if they select a low-growing, or Class I tree."*

Trees were severely damaged and killed by the Respondent on the Property as evidenced in this Complaint. The evidence and statements of Tim and the Respondent's staff evidenced herein indicate Trees on the Property were topped as they were deemed as being a *"hazard to the public or the energy system"* and therefore classified hazardous by the 3rd party contractor and reaffirmed by the Respondent's manager Van Patten. The Respondent claimed no culpability regarding the damaged and dead Trees, just that they were classified as hazardous. Van Patten also stated, *"the topping of the Trees were for the benefit of all power users"*. This wording *"hazardous"* and *"for the benefit of all power users"* sounds like condemnation of the Trees by a quasi-public corporation. When making these comments to the Complainant, Van Patten offered a \$50.00 voucher in restitution for the condemned Trees while claiming no capability on the part of the Respondent.

The amount offered and the Respondent's condemnation of the Trees is arbitrary and capricious. There are several court cases concerning this exact issue, some involving trees that were commended without just compensation. What are the Respondent's policies, rational and methods used to determine condemnation, hazardous and tree values? Their policy states \$50.00 per trees, regardless of type, condition and size. How was this amount determined and what valuation standards were used or considered? The value of the Trees damaged and killed by the Respondent on the Property have been calculated at \$8634.38. The valuation process used by the Complainant is evidenced in the Procedures Used By Complainant Section, Tree Valuation Procedure, Methods and Formula Used and Exhibits 11A through 11G, Appraised Tree Value.



Not only are their valuation policy arbitrary and capricious, their "*Replacement Options*" policy is in violation of the Complainants property and Constitutional rights. It that their policy states, "*Customers may plant a new tree in the same spot only if they select a low-growing, or Class I tree.*" Not only have they condemned the Tree on the Property, they are placing conditions on receiving what they consider just compensation. Secondly, a voucher is not compensation but an attempt to circumvent their responsibility and proper compensation. The Respondent's \$50.00 voucher also comes with conditions. Those being the Complainant can only replant or use the voucher for "*a low-growing, or Class I tree.*" Therefore, if the Complainant doesn't comply with this policy demand, they will not receive any compensation. Compensation is not a voucher but cash and with no conditions attached. What authority does the Respondent have to regulate any compensation or the type of trees that can be planted on private property? None. There are no State Statutes or Ada County ordinances that limit a property owner as to where and what type(s) of trees they can plant on their property.

The Respondent's policies and actions are a clear example of a "Takings," condemnation without just compensation. The Fourteenth Amendment guarantees due process and equal protection under the law. Trees are property and have value, they are also a commodity in the United States. The Ada County Assessor's office consider landscaping (which includes trees) in determining property values. The Respondent's replacement fee schedule of \$50.00 per tree is unreasonable, unjustifiable and amounts to a takings without due process or just and fair compensation. Tree value standards and methodologies have been established by the courts. These methods are based on standardized methods and procedures. What are the Respondent's evaluation methods and standards? As stated by Van Patten their policy is \$50.00 and that, "Paying for the true value of a tree would be too costly for Idaho Power and its rate payers." What Federal or State Statutes exempt the Respondent from fair and just compensation for condemnation or destruction of private property? Their polices violate the 14th Amendment of the US Constitution, and the Constitution of The State of Idaho, Article I – Declaration of Rights, Sections 1. Inalienable Rights of Man, Section 3. State Inseparable Part of Union and Section 14. Right Of Eminent Domain.

#### ***Fourteenth Amendment to the United States Constitution***

*The Fourteenth Amendment of the U.S. Constitution prohibits anyone, by virtue of public position under a state government, to deprive another of property, life, or liberty, without due process of law, or deny or take away the equal protection of the laws. All state legislation, and state action of any kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty, or property without due process of law, or which denies to any of them the equal protection of the laws is prohibited by the Fourteenth Amendment. The Fourteenth Amendment prohibits states from violating an individual's rights of due process and equal protection.*



*CONSTITUTION OF THE STATE OF IDAHO*  
*ARTICLE I – DECLARATION OF RIGHTS*

***SECTION 1. INALIENABLE RIGHTS OF MAN.*** *All men are by nature free and equal, and have certain inalienable rights, among which are enjoying and defending life and liberty; acquiring, possessing and protecting property; pursuing happiness and securing safety.*

***SECTION 3. STATE INSEPARABLE PART OF UNION.*** *The state of Idaho is an inseparable part of the American Union, and the Constitution of the United States is the supreme law of the land.*

***SECTION 14. RIGHT OF EMINENT DOMAIN.*** *The necessary use of lands for the construction of reservoirs or storage basins, for the purpose of irrigation, or for rights of way for the construction of canals, ditches, flumes or pipes, to convey water to the place of use for any useful, beneficial or necessary purpose, or for drainage; or for the drainage of mines, or the working thereof, by means of , railroads, tramways, cuts, tunnels, shafts, hoisting works, dumps, or other necessary means to their complete development, or any other use necessary to the complete development of the material resources of the state, or the preservation of the health of its inhabitants, is hereby declared to be a public use, and subject to the regulation and control of the state. Private property may be taken for public use, but not until a just compensation, to be ascertained in the manner prescribed by law, shall be paid therefore.*

In conclusion of this section, the Complainant had no protection under the law, as stated by the Respondent's policies and Van Patten. Due process only applies to the Respondent if it serves their needs and bottom line, as clearly evidenced by Van Patten's comments. In the Respondent's words, through their manager Van Patten, "You have no property rights . . . and that, "Paying for the true value of a tree would be too costly for Idaho Power and its rate payers." There are exemptions in the Federal or State constitution indicating that just compensation is determinate upon the Respondent's profitability and bottom line. Lastly, it has been evidenced herein that the Respondent has no tree valuation process, only an arbitrary amount of \$50.00. The policies reviewed in this section are arbitrary and capricious and Trees were condemned without fair and just compensation in violation of Constitutional Rights.



## 5. Notice

*"The area supervisors, Idaho Power utility arborists and staff notifying customers in advance about the line clearing project are all certified arborists."*

*"We leave door hangers on each customer's door before crews arrive for routine maintenance work scheduled for the area. We are unable to provide prior notification in emergency situations."*

*"Idaho Power is obligated to keep lines clear to provide power to the community and our customers. We can, as a last resort, pursue legal means."*

The Respondent's noticing policies are conflicting, arbitrary and capricious. One policy states *"The area supervisors, Idaho Power utility arborists and staff notifying customers. . ."* This sounds like a crew of at least three (3) staff members: The area supervisor, their utility arborist and staff (other unidentified staff) provide notice. While another policy states, *"We leave door hangers . . ."*

The Respondent failed to notice the Complainant of their Incident 1 and Incident 2 tree trimming activities. No notice of any manner or type was given. What is their actual notice policies and procedures? It has been evidenced herein that a 3rd party contractor crew member indicated it was his responsibility to notice and this was affirmed by Tyler's comments. Van Patten indicated that Tyler was the area supervisor. If this is correct, why didn't Tyler, the Idaho Power utility arborist, and staff notify the Complainant in advance of the line clearing and tree trimming activities as one policy states. The first time the Complainant met Tyler was on April 28, 2020 when he came to the house for a meeting. Their notice policies are arbitrary and capricious and the Respondent's management staff don't know what the noticing policies are.

The policy, *" . . . arborists and staff notifying customers in advance about the line clearing project . . ."* or *"before crews arrive."* How is *"in advance"* and/or *"before crews arrive."* defined. 1-day, 1-week or perhaps 2-weeks in advance. What does *"before crews arrive"* mean, the day of arrival as indicated by the 3rd party contractors "crew notice person" when he came to the door to talk to the Complainant about the damaged pipe, or 1-day before the crew arrives or perhaps 1-week or 2-weeks before. These policies are conflicting, arbitrary and capricious. Secondly, they have no policy or method to prove notice was given. Any and all work on private property, including work in an easement located on private property by a government agency or quasi-government agency, or quasi-public corporation must provide notice. The property owner has the right to refuse access to their property and any easements therein. Idaho Power knows this otherwise they would not have a policy stating, *" . . . We can, as a last resort, pursue legal means."* This policy refers to a property owner denying access for line clearing when noticed. The Complainant, not being noticed, was not afforded that right of due process nor the ability to deny access. It is evidenced herein that the Respondent's employees and their 3rd party contractor were confused about the noticing policies. Van Patten simply called the Complainant a liar, and stated *"...you were noticed, I have proof."* The Complainant asked to see this proof but



none has been provided. This was likely a bullying tactic used to intimidate the Complainant and no proof is available. The Complainant has provided evidence herein that no notice was made.

In conclusion of this section, it has been evidenced that the due process rights of the Complainant were violated by the Respondent's failure to provide notice. It was also evidenced herein that their noticing policies are conflicting, arbitrary and capricious. The two policies mentioned are ambiguous, and have been interpreted differently by Tyler, Van Patten and the 3rd party contractor. Their policies have no noticing time frames that are measurable and their methods of notice differ between the two policies. The Respondent's policies lack content and do not consider all situations such as how HOA's would be noticed when trees are located on common lots, or how property owners that rent their property and reside off-site are noticed. They have no policy in place to monitor or prove noticing has occurred by their staff or by 3rd party contractors in conformance with their policies and standards.

## **6. Handling Complaints and Review Procedure**

*"If it is clear that pruning killed the tree, Idaho Power will cut it to a stump and provide the customer a voucher to replace the tree".*

This is the only policy the Respondent has regarding tree trimming complaints. They have no other published policies or procedures indicating how a customer can make a complaint regarding their tree trimming crews or damaged property. The policy they have and the process used by the Respondent as evidenced in the Summary and Statement of Facts section is arbitrary and capricious. It is further evidenced herein that their staff have different approaches and opinions regarding how to handle a complaint and render a determination. The process described herein by Tyler and Van Patten clearly indicate an arbitrary and capricious approach. The only similarities between the two is that they both denied culpability and used bullying tactics and name calling on intimidate the Complainant. It has been evidenced herein that the complaints lodged by the Complainant directly to the Respondent were handled differently by staff, Tyler and Van Patten. In regards to Incident 2, their comments and review of the Property differed. The Complainant received no written or formal evaluation in writing on how they determined the Respondent had no culpability or reasoning for their final judgment. It was all done on the Property in a matter of minutes. When the Complainant disagreed with their decision, the manager Van Patten stated the Complainant had no property rights and the Respondent could do what they wanted with Trees on the Property. A classic bullying tactic, deny any culpability, threaten, demean the customer, show superiority by calling the customer a liar. When this doesn't work offer a small token, such as a \$50.00 voucher to appease the customer. When the Complainant and the Respondent's staff could not arrive at a mutual agreement the Respondent's staff diverged to a take it or leave it approach, referring to the \$50.00 voucher. They offered no other review options such as the PUC's informal complaint process, just their take it or leave period.

Their policy, *"If it is clear that pruning killed the tree, Idaho Power will cut it to a stump and provide the customer a voucher to replace the tree"*, is arbitrary and capricious. As evidenced herein, the Complainant called the Respondent after Incident 1, regarding dead trees. They



instructed the Complainant to wait until the Trees died completely and became snags. They implied, snags were required to claim dead trees, but again offered no other options such as appeals or the PUC. Cutting a 30-foot columnar tree down to 8-feet wasn't considered killing the tree. There were no limbs left, just barren trunks, but that wasn't considered dead by some arbitrary decision made by the Respondent's staff. What standards are used to determine if the Respondent was responsible for killing a trees? How is, "*If it is clear. . .*" defined? The word "*clear*" and this policy is arbitrary and capricious and provides no definable conditions or standards. This policy clearly allows the Respondent to deny culpability in every complaint if it not "*clear*" to their staff how the tree died. The word "*clear*" is an adjective and defined as, "Easy to perceive, understand, or interpret, clear and precise directions." Where are the Respondent's clear and precise policies, they have none. If they do, it's not clear to the Complainant what those policies are.

In conclusion of this section, it is evidenced herein that the Respondent has no policies on how to handle complaints. It has also been evidenced the Respondent's staff make their policy determinations and renders decisions in an arbitrary and capricious manner. They provided no written reasoning or analysis for the Complainant to review, consider or discuss with the PUC. During Incidents 1 and 2, complaints were handled differently and the methods and decisions rendered were arbitrary and capricious. However, they all used similar bullying and denial tactics leading the Complainant to believe there must be some internal policy as to how complaints are dealt with. Regarding the Incident 2, the Respondent's staff took less than three (3) minutes to determine the Respondent's pruning and topping had no impact on the Trees or culpability on their part. This is definitely a speedy process for the Respondent with formal policy or reasoning provided to the Complainant other than that he was uneducated, not an arborist and a liar.

## **7. Damaging Personal Property**

The Respondent has no policy regarding damaged property resulting from their line clearing and tree trimming work. Personal property was damaged on the Property during Incident 1 and Incident 2. The trimming crew could not state or produce the Respondent's policy on how to handle damaged property or who was ultimately responsible. What is the Respondent's policy regarding private property damaged by the Respondent or a 3rd party contractor? Their policy of killing a tree was previously discussed, but that policy didn't mention other property that may be damaged. With no policy for other property beside trees, the Respondent failed once again to provide reasonable assurances and safeguards for their customers. This leaves their customers to deal with the Respondent's 3rd party contractor. At a minimum, the trimming crew should have had a contact name and number for a Respondent's staff person. The Respondent should be the one handling these situations with the customer. In regards to this Complaint, the Respondent should have been notified by the crew and should have met with the property owner to resolve the damage. Instead, the Complainant was pressured by the 3rd party contractor to make a quick decisions in order to limit further damage to the Property. The Complainant was forced to settle as pressure was applied by Tim an Asplundh employee. Tim knew the Complainant was concerned about the hay field being damaged along with the other trees on the Property resulting



from the broken irrigation pipe. Realizing this and other factors evidenced herein the Complainant settled quickly out of despair. Why should any Idaho Power customer be put into this situation. The Respondent should have a policy to deal with these types of issue and they should be the ones who deal with their contractors, not their customers.

In conclusion of this section, it has been evidenced herein that the Respondent has no policy to deal with damaged personal property. Their 3rd party contractors use bullying tactics and threats of prolonged settlements in order to obtain a speedy resolve to benefit the 3rd party contractor. This quasi-public corporation failed again to develop ethical standards and to provide reasonable protection for their customers when private property is damaged by the Respondent or a 3rd party contractor.

## **8. Contractor Training, Training Verification, Certification and Identification**

*"Idaho Power hires qualified line-clearing contractors to keep our power lines clear"*

*"Each crew has at least one certified arborist or person who has completed an advance course in arboricultural training."*

*"We do not "round" Trees over because it's not good for the health of the Trees. We follow the ANSI A300 tree pruning standard and use a method of pruning called directional pruning. This method is endorsed by many in the tree-care industry as being the best technique for the health of the tree."*

*"Each tree is different and must be considered individually. Trees with trunks close to the power lines require much heavier pruning than Trees located farther from the line."*

*"Some techniques that are appropriate on hardwood Trees cannot be used on some softwood species. When pruning, our experts make every attempt to provide sufficient clearance for the tree to remain safe until the next routine maintenance (roughly every three years)."*

*"Directional pruning removes each limb where it joins another limb or at the trunk. This procedure is different from "rounding" Trees over, where limbs are cut at random points, normally leaving unhealthy "stub" cuts."*

*"Directional pruning involves cutting a limb back to another limb so future growth is directed away from power lines. With the directional technique, tree growth causes minimal impact to public safety and electric service."*

The Respondent's policies state that they hire, ". . . qualified line-clearing contractors. . . " while another states, "Each crew has at least one certified arborist or person who has completed an advance course in arboricultural training." these policies are ambiguous, arbitrary and capricious. Are the crews trained or just qualified. How is "qualified" defined and how are these



line-clearing contractors qualified? The other policy provides more ambiguous language as their policies do not differentiate between crew or contractor. When their policies mention crews are they talking about the Respondent's employee crews or 3rd party contractor crews?

It has been evidenced herein their 3rd party contractor did not have , "*... at least one certified arborist. . .*" or have "*...completed an advance course in arboricultural. . .*" So why is the Respondent sending untrained 3rd party contractors into the community to trim trees that have no training or knowledge of proper pruning methods or the Respondent's policies? Van Patten could not confirm nor deny the Asplundh crews were trained and the Respondent doesn't verify training of crew members. This evidence clearly demonstrates the Respondent's lack of respect for private property rights and their customers. When considering the qualifications of a 3rd party contractor, how does the Respondent evaluate the contractors qualifications? Their policies state they only hire "*qualified contractors*", what are those qualifications? Are the qualifications based on the bid amount, and the lowest bid wins and therefore qualifies the contractor? Does the Respondent take the contractors word that their staff is qualified? This is what Van Patten implied and what about the "*advanced course in arboriculture.*"

Let's look at this in a different angle. If there is no certified arborist on the crew does the Respondent provide the "*...advance course in arboricultural training?*" If they do, what is the training and how does the Respondent ensure all the crews in the field are qualified and trained? Does the Respondent perform audits to ensure all crews are trained? How are new hires trained and audited? Are the trained crew given certificates of completion indicating they passed the "*... advance course in arboricultural training?*" Tim had no certification to show the Complainant. Before being certified in their "*...advance course in arboricultural. . .*" are the trainees required to pass a written test, and if so, what in the minimum passing score? If they are not tested, how can Idaho Power ensure their qualifications and training? These are all reasonable questions a property owner would ask before hiring a crew to trim their valuable trees, so what is the Respondent doing to protect and safeguard their customers trees and property?

Their policies also mention several pruning methods and statements that they do not round trees. This has been discussed in a previous section, but the Complainant would like to review a few additional points related to training. From reading the Respondents' their policies, they state they conform to ANSI A300 standards. The Complainant then assumes their crews are trained on these standards. An assumption is all it is, as their policies do not state what the crews are trained on, just that they have been trained in an "*...advance course in arboricultural. . .*". How is "*advanced*" defined when compared to a standard course? Is this more smoke and mirrors by the Respondent to provide assurances to their customers that their trees will be properly pruned?

If the crews are trained and the contractors are qualified why are their crews rounding trees (toping trees) in noncompliance with the Respondent's polices and ANSI A300 standards. Their policy states, "*We do not "round" Trees over because it's not good for the health of the Trees. We follow the ANSI A300 tree pruning standard and use a method of pruning called directional*



*pruning. This method is endorsed by many in the tree-care industry as being the best technique for the health of the tree."*

It has been evidenced herein, that training was not provided to at least one (1) line clearing crew and that crew doesn't appear to be qualified either as evidenced by that topping of the Trees on the Property and Tim's statements. It has also been evidenced herein, that the Respondent is not following ANSI A300 standards as claimed in their policy statements. The ANSI A300 standards evidenced below applies to pruning and trimming operations related to aboveground utility lines. In those standards, they have an Advisory Notice that states, " *Certain pruning practices are not acceptable and can injure Trees: **Topping:** The reduction of a tree's size using heading cuts that shorten limbs or branches back to a predetermined crown limit. **Lion's Tailing:** The removal of an excessive number of inner, lateral branches from parent branches.*"

It has been evidenced that both of these practices were used during Incident 1 and Incident 2. Tyler, the supervisor and Van Patten, the proclaimed manager and arborist for the tree trimming department indicated they had no knowledge of the topping policies or the standards described above. If they don't know their own policies or standards how can they perform their duties and make field decision regarding culpability? Both Tyler and Van Patten stated topping trees are a standard practice used in arboricultural and by the Respondent. It has been evidence herein that this is not a standard practice in arboriculture nor allowed by the Respondent's policies. The Complainant's Trees were topped. The damage has been done and the Complainant has to live with the Respondent's lack of training and poor management. Nothing can bring the Trees back, nor can they be replaced with Trees of similar size. The visual impact, loss of property and property value coupled with the sadness of losing these beautiful Trees cannot be put into monetary terms. The saddest part is that the Respondent really doesn't care as evidenced herein by their staff's comments. There is no burden or consequences upon the Respondent or their staff. Any monetary damages awarded will be paid by the ratepayers. The Respondent will simply pass the costs down the line to rate payers and continue to do what they want. Their customers, in their mind, and as stated by Van Patten, "You have no rights and you should be grateful Idaho Power provide you with electrical power." It appears they do have all the Power!

### ***ANSI A300***

*This part of the A300 standards applies to pruning and trimming operations*

*Part 1 Pruning addresses:*

- *Pruning objectives*
- *Pruning systems*
- *Pruning specifications*
- *Pruning cuts*
- *Pruning practices*
- *Palms and similar plants*
- *Pruning definitions*



*A300 Pruning standards recognize, but are not limited to, the following pruning objectives:*

- *Manage risk*
- *Manage health*
- *Develop structure, such as to: Improve branch and trunk architecture Promote or subordinate certain leaders, stems, or branches; Promote desirable branch spacing; Promote or discourage growth in a particular direction (directional pruning); Minimize future interference with traffic, lines of sight, or infrastructure, or other plants; Restore plants following damage; and/or, Rejuvenate shrubs.*
- *Provide clearance, such as to: Ensure safe and reliable utility services; Minimize current interference with traffic, lines of sight, infrastructure, or other plants; Raise crown(s) for movement of traffic or light penetration; Ensure lines-of-sight or desired views; Provide access to sites, buildings, or other structures; and/or, Comply with regulations.*
- *Manage size or shape*
- *Improve aesthetics*
- *Manage production of fruit, flowers, or other products*
- *Manage wildlife habitat*

**Advisory Notice:**

*Certain pruning practices are not acceptable and can injure Trees:*

- ***Topping:*** *The reduction of a tree's size using heading cuts that shorten limbs or branches back to a predetermined crown limit.*
- ***Lion's Tailing:*** *The removal of an excessive number of inner, lateral branches from parent branches.*
- ***Rooster-Tailing:*** *The over-thinning of palms, usually by removing too many lower, live fronds.*

The Respondent has additional policies one would assume are incorporated into their "crew" training. *"Each tree is different and must be considered individually. Trees with trunks close to the power lines require much heavier pruning than Trees located farther from the line."* *"Some techniques that are appropriate on hardwood Trees cannot be used on some softwood species. When pruning, our experts make every attempt to provide sufficient clearance for the tree to remain safe until the next routine maintenance (roughly every three years). These policies are arbitrary and capricious as well. Their wording "Trees with trunks close to the power lines. . ."* is ambiguous and leads to an arbitrary and capricious judgment call upon the pruner as the word "close" is not defined. The next policy mentions "sufficient clearance." It fall is the same category as the previous statement as the word "sufficient" is ambiguous and leads to an arbitrary and capricious judgment upon the pruner. This has been evidenced in Exhibit 8,



Distance From Power lines and Exhibit 9, Images of Pruned Trees. Van Patten stated, " trees with trunks close to the power lines require much heavier pruning than trees located farther from the line." The Complainant's Trees were topped and the trunks of these Trees are 22-feet from the nearest power line. While others located on Ten Mile Road, south of the Property were trimmed and not topped that are within 2-feet of a power line.

It has been evidenced herein, that the Incident 2 trimming crew had no guidelines, memorandums, notes, guidance or expert input of any manner from the Respondent on how the Trees on the Property were to be pruned. This has been evidenced by the Complainant, and reaffirmed by the crew as he asked for these documents and they had none to offer. So who was the expert mentioned in their policy making the decisions regarding the pruning of the Trees? Tim stated he was not an arborist. How is this arbitrary and capricious policy interpreted, ". . .our experts make every attempt to provide sufficient clearance. . .", how is "sufficient" defined? Who are the "experts" and how is "sufficient clearance" defined? Where are the dimensional standards? Without clear dimensional guidelines and standards for specific tree types and species this policy is arbitrary and capricious.

In conclusion of this section, it has been evidenced the Respondent's policies cited are arbitrary and capricious with no merit. They are ambiguous and do not differentiate between crew or contractor and the associated training for each. There is no policy or defied training specifications, certification or testing requirements. The policies do not define what constitutes a qualified contractor. In fact, their policies seem to be written more to provide assurances to their customers rather than guidelines for their crews, staff and contractors. The Respondent's policies reference several pruning methods and standards and these standards are not being used by the Respondent or 3rd party contractors. Other policies reference terms such as "close to the power lines" and "sufficient clearance". These terms are ambiguous and lead to arbitrary and capricious judgments by the Respondent's staff and 3rd party contractors. It has been evidenced herein, that training was not provided for one (1) crew. Furthermore, how can crews be trained or contractors qualified with arbitrary and capricious policies? The burden of the Respondent's incompetence has been placed on the property owners, and more specifically this Complainant with no burden or consequences placed upon the Respondent or their staff.

## **9. Tree Removal Policy**

*"Sometimes it's necessary to remove a tree that has become a hazard to the public or the energy system. If a tree or Trees are classified as hazardous, Idaho Power will remove the tree and discuss replacement options with the property owner. Customers may plant a new tree in the same spot only if they select a low-growing, or Class I tree. Class I Trees grow to a maximum height of 25 feet."*

This policy has been previously discussed to some extent, but the Complainant wants to address another point directly related to this policy. If the Trees on the Property were considered "a



*hazard to the public or the energy system.*" as evidenced herein, then why didn't the Respondent "remove the trees and discuss replacement options" with the Complainant instead of denying any culpability? The arbitrary and capricious nature of this policy has been discussed in section 4. Due Process - Takings. Statements were made suggesting the Trees are taller than the power line and therefore a hazard as evidenced herein. One possibility why they didn't follow this policy is that they top the Trees to save the Respondent money. When they die they can claim no culpability, like they have made in this Complaint. Therefore the removal and replacement of the dead trees would be at the burden of the property owner not the Respondent. The Respondent's knows the Formal Complaint process is complicated and arduous so they gamble that a formal complaint won't be filed and many won't ever file an informal complaint.. This fact is evidenced by the PUC records. 362 complaint calls were made to the PUC regarding the Respondent. Of those calls only 241 resulted in a PCU complaint process. This means that 33% of the complaint calls regarding the Respondent to the PUC did not proceed with a complaint. It is unknown how many complaints were made directly to the Respondent as the PUC doesn't track them. In 2018 and 2019, 28% and 40% respectively of the complaint calls regarding the Respondent to the PUC did not proceed with a complaint. That's an average of 34% annually. With these percentages why would the Respondent ever claim culpability for any issue or follow policies when they win 34% of the time. They have no competition and there are no other options for their customers but to take it or leave it as so eloquently stated by Van Patten.

In conclusion of this section, the Respondent failed to comply with their policy by removing the hazardous Trees, Trees they designated hazardous. Perhaps the noncompliance with this policy was not ignorance, but an effort to save the Respondent money by circumventing and manipulating policies to their benefit. The Respondent's policies and practices take advantage of their customers. They know many of their customers won't file a complaint and others don't know about the PUC complaint process let alone have the background or time to file a formal complaint. The PUC's formal complaint process places the burden upon the customer, when the process should be place the burden on the Respondent. When a direct complaint is made to the Respondent or an informal complaint is made to the PUC, the Respondent should be responding in writing what their policies are and how they have complied with them. It should not be the Complainants responsibility. The Respondent has to take some responsibility for their actions. 362-complaints were made to the PUC regarding Idaho Power in 2017. 272-complaints were made in 2018 and 210-complaints were made in 2019. In total, 844-complaints have been made to the PUC regarding the Respondent in the last 3 years. How many complaints were made directly to the Respondent? Who pays for these complaints? The rate payers, their customers. The PUC retains three (3) full time employees to handle complaints. The rate payers pay for these employees. The Complainant maintains the Respondent doesn't care about their customers as they do not have comprehensive policies. Additionally, the manner in which they bulling their customers clearly demonstrates they only care about their bottom line. If they did care about their customers they wouldn't have so many complaints. The Respondent knows that 34% are not followed through by the customer so they save money by default. The Respondent's poor management and customer service is rewarded by the current PUC complaint process. Formal complaints cost more to process, than informal complaints. You have to consider the Commissioners salaries and the AAG's review costs that amount to thousands of dollars. Who pay these costs, the tax payer, not



the Respondent another win for them. The Respondent's abuse and unethical practices need to stop. The Respondent needs to respond to each and every complaint in writing as mentioned above. If they are at fault, the Respondent should state what action(s) they will take and the specific time frame required to correct or draft new policy(s) to correct the oversight. This process would lead to less complaints and more efficiencies thereby reducing user rates. If the response is questionable, then the customer would be able to seek formal complaint review based on a written response from the Respondent. If the complaints are reviewed properly by the Respondent the likelihood of formal complaint being filed with the PUC should be very low thus saving tax dollars and leaving the Commission to pursue other matters.

#### **10. Inspection of work performed by contractors or Idaho Power employee**

*"Each crew has at least one certified arborist or person who has completed an advance course in arboricultural training."*

*" Tariff 101, Section 7. Rights of Way. The Customer shall, without cost to the Company, grant the Company a right of way for the Company's lines and apparatus across and upon the property owned or controlled by the Customer, necessary or incidental to the supplying of Electric Service and shall permit access thereto by the Company's employees at all reasonable hours. The Customer shall also permit the Company to trim Trees and other vegetation to the extent necessary to avoid interference with the Company's lines and to protect public safety."*

The PUC has not authorized the Respondent to use contractors for line maintenance work related to tree trimming services only "Company" personal. The only approved Tariff that addresses tree trimming is, Tariff 101, Section 7. Rights of Way. This section clearly states, "... the Company's employees at all reasonable hours. The Customer shall also permit the Company to trim Trees and other vegetation. . ." Nowhere in this section is the word contractors used. The word Company is capitalized and defined as meaning Idaho Power as the Company. The Respondent uses contractors and has no policies that provide assurances to their customers that their work is in compliance with the Respondent policies and standards. Their policies imply line maintenance tree trimming work is performed by the Respondent's employees as evidenced herein. The Complainant mentioned to Mr. Thaden that the Respondent uses 3rd party contractors to perform line maintenance tree trimming work and he was not aware of this fact. The Respondent's customers should have some assurances that work being contracted out is managed and supervised by the Respondent's staff to ensure compliance with their policies. If a 3rd party contractors work doesn't need to be checked then why does the Ada County and Idaho State have inspectors? To inspect the work of licensed and trained contractors for compliance with State standards. How is the Respondent any different, they are a quasi-public corporation. At a minimum the Respondent should perform random inspections and these inspections should



be documented. The burden of compliance should not rest upon the property owner to ensure compliance as they don't develop the standards.

In conclusion of this section, it has been evidenced herein that the Respondent is a quasi-public corporation with certain duties and responsibilities. Their complicity and lack of supervision in regards to their contractors has been evidenced herein. It is the Respondent's responsibility and duty to ensure their contractors are performing within stated policies and guidelines. More importantly, the Complainant has found no approval from the PUC authorizing Idaho Power to use contractors for line maintenance work related to tree trimming services. The only approved Tariff that addresses tree trimming is, Tariff 101, Section 7. Rights of Way. This section clearly states, **" Company's employee"** and **" shall also permit the Company to trim Trees and other vegetation"**. Nowhere in this section is the word contractor used. The word Company is capitalized and defined as Idaho Power the "Company". Company is not defined as Idaho Power and/or its contractors but singularly as Idaho Power, the Company.

## 11. Debris Policy and ADA Requirements

*"Wood larger than four inches in diameter will be cut into manageable sizes for the property owner and left behind. Small pieces of wood and branches are chipped at the job site and hauled away or left behind at the owner's request."*

This policy is arbitrary and capricious. How is the term ". . .manageable sizes. . ." defined. Tyler stated, the debris left were cut to manageable sizes while Van Patten stated some of the debris was not cut to manageable sizes. Van Patten offered to have the crew come back and cut them down. Since the term "manageable sizes" are not dimensionally defined it leads to arbitrary and capacious decisions by the Respondent's staff, and their 3rd party contractors as evidenced by their comments. Their comments clearly evidence the arbitrary and captious wording as they Tin, Tyler and Van Patten each had different definitions of what constitutes "manageable sizes."

This policy also states, *"Small pieces of wood and branches are chipped at the job site and hauled away. . ."* this policy is also arbitrary and capacious as no dimensional standard for "Small" are defined. How is small defined, less than 4-inches? A lot of small debris, smaller than 4" was left on the Property. The Complainant was told the debris cleanup was the property owners responsibility. Exhibit 10, Images of Debris Left Behind from Incident 1 and Incident 2 evidence all sizes of branches were left behind, some as small as 1/4-inch in diameter. The policy states branches larger than 4-inches will be left behind, but "Small" branches will be hauled away. Why were branches smaller than 4-inches left behind?

Lastly, the Respondent's policy of leaving debris behind creates an undue burden and hardship for the property owner. In regards to this Complaint, both property owners are disabled. The Complainant mentioned this to Tim, Tyler and Van Patten when asking for and making a reasonable accommodations request, which was to remove the debris. All denied the Complainant's reasonable accommodations request. The Respondent's policies do not take into



account Reasonable Accommodations Requests, ADA requirements or Undue Hardship Under the Americans with Disabilities Act. The Respondent is a quasi-government corporation. Therefore, they are in violation of ADA guidelines by not developing policies and procedures that incorporate ADA compliance. By denying the Complainants "Reasonable Accommodations Request" without proper consideration is a violation of his rights under the Americans with Disabilities Act. The ADA does not require provisions for auxiliary aid that would result in an undue burden or in a fundamental alteration in the nature of their tree trimming activities. However, they are not relieved from the duty to furnish an alternative auxiliary aid, if available. No such aid was offered and no policy exists addressing the availability or consideration of an alternative auxiliary aid.

In conclusion of this section, it has been evidenced herein that this policy is arbitrary and capacious and places an undue burden and hardship upon the property owner. The Complainant also reviewed other locations on Ten Mile Road south of the Property and observed Asplundh tree trimming crews during the same time period as Incident 2. No noticeable debris was left behind by those crews. Lastly, It has also been evidenced herein that the Respondent violated the Complainant's ADA rights and that they are noncompliant with ADA Statutes. The Respondent's have no ADA policies, specifically those regarding a Reasonable Accommodations Request and Alternative Auxiliary Aid.

#### EXHIBIT 10, IMAGES OF DEBRIS LEFT BEHIND FROM INCIDENT 1 AND 2

IMAGES OF DEBRIS LEFT BEHIND FROM INCIDENT 1 AND 2





## Compensation - Remedy

Below outlines the compensation the Complainant is requesting from the PUC by the Respondent:

1. The Respondent shall remove seven (7) Trees from the Property, Trees identified as Trees 1,2,3,4, 5, 6 and 7. Removal shall include all tree material including stumps. When completed, the removal area grounds shall look natural in nature, when compared to the immediate surrounding grounds adjacent to the Tree removal area.
2. The Respondent shall remove all debris left behind from Incident 1 and Incident 2.
3. The Respondent shall pay compensation for the seven (7) Trees they maliciously topped while trespassing. Whereby killing Trees and damaging private property in the sum of \$8,624.38. (The valuation amounts shown are not an arbitrary compensation amounts, but calculated using approved mythology, the same or similar methodology used by many regulatory agencies and courts. See section Procedures Used By Complainant, Tree Valuation Procedure, Methods and Formula Used.)
4. The Respondent shall replace and provide the Complainant with an 8-inch by 30-foot white polyurethane transfer irrigation pipe that was damaged and \$50.00 for installation costs.
5. The Respondent shall reimburse the Complainant \$100. The amount paid to have the damaged transfer irrigation pipe removed, hauled off and a temporary gated irrigation pipe installed.
6. The PUC shall, require a letter of apology from the Respondent, specifically Lisa A. Grow, President and Chief Executive Officer of IDACORP, Inc. The letter shall be addressed to Mark and Raschel Pecchenino. The letter shall include language apologizing for the Respondent's poor handling of this matter. Acknowledging the time spent noticing them of their poorly written policies, staff bullying, and the stress and hardship the Respondent has caused the Complainant and his family. It shall also acknowledge cultural change is required within the organization and its policies. Including the bullying, vicious nature and unprofessional manner documented herein by the Respondent's staff, namely Tyler H. and Van Patten. Their actions were inexcusable and should not be tolerated or allowed by the Respondent.
7. The PUC shall require the Respondent to correct the arbitrary and capricious wording as documented herein and their policies, including Tariff 101, Section 7. These changes shall be reviewed by the PUC and incorporated into a Tariff to ensure the new tree trimming policies are complete, appropriate and measurable. Including but not limited to noticing and a tree valuation policy. These new policy and Tariff shall be submitted to the PUC within 6 months of the PUC's completed action of this Complaint.



## **Procedures Used By Complainant**

### **Procedure Used in Timing Idaho Power Staff Site Review**

The Complainant has always strived to create accurate and detailed record of events in his work and this Complaint is no exception to that rule. Such as the stopwatch timing of Tyler and Van Patten. The mythology and procedure used for both timings are as follows: The time for Tyler and Van Patten each commenced upon them fully exiting their vehicle and completing one (1) step. The timing stopped upon them returning to their vehicle and touching their door handle to re-enter their vehicle. Both parked their vehicles within 10 to 15 feet of Tree number 1 as described herein.

The Commission may be curious as to why the Complainant timed Idaho Power staff. There are three (3) reasons. The first is how the Boise office handled Complaint 1, from the person answering the phone call to their stated policy. Also, the manner in which the woman in the Boise Tree Department answered the phone and handled the conservation regarding Complaint 2, to the subsequent return phone call from Tyler. The person answering the phone in Complaint 1, and the woman answering the phone in Complaint 2, in addition to the return call from Tyler appeared to be burdened and bother them. In that the Complainant's phone calls were trivial and a waste of their time. Tyler indicated that he didn't really need to see the Trees as topping was a standard practice, and the mess left behind was my responsibility. He also stated that having to come by to review the Trees was, ". . . out of my way . . ." The Compliant insisting upon a site meeting and his response ". . . I will stop by if I can do it on my way to work tomorrow morning . . ."

Secondly, based on the cumulative attitudes described above, the Complainant believed that a PUC complaint of some form would likely be the end result. This is something the Complainant was trying to avoid due to the time and effort required for such a strenuous undertaking and why the Complainant tried to resolve the issues with the Respondent directly.

Lastly, through the Complainants years of experience in writing legal petitions, findings of fact, conclusions of law, and numerous appeals, the Complainant understands the importance of an accurate and precise record and the due diligence upon his part. The Complainant has a reputation of being accurate, precise and detailed oriented. The Complainant is methodical in his work and he documents everything including conservations as soon as possible after having them in order to create an accurate record of events and facts. This is the Complainant's everyday practice whenever calling a service provider with a question or concern. Unfortunately the notes form Incident 1, could not be located from storage and a general time frame was used. This is an example of a customer in that 43% group that didn't follow-up with a PUC complaint in the 2017-2018 time frame. However, the PUC was not called so the actual percentage is unknown as the PUC doesn't track complaints made directly to the Respondent.



## Tree Valuation Procedure, Methods and Formula Used

The Complainant has provided the mythology and standards used to determine the values Trees 1 through 7. The process used by the Complainant is a widely used and accepted method. The Complainant has used these standard when developing ordinances and guidelines on the subject. The Complainant's valuations are not arbitrary but rationale, standardized and outlined herein this document. In the United States, municipalities and courts utilize recognized methods for tree appraisals and values. These standardized and accepted method are also used worldwide. The International Society of Arboriculture (ISA), is a professional nonprofit registered in the State of Illinois as a 501c (5) nonprofit. This organization provides the basis for most standards used in the United States. The ISA is recognized as a professional organization. One of the most common and easiest method used by municipalities and courts is the Multiplicative or Parametric Methods, also known as the Tedesco Method. (<sup>1</sup>Methods of Tree Appraisal: A Review of Their Features and Application Possibilities, Arboriculture & Urban Forestry 2012. 38(4): 130–140, Authors': M.A. Grande-Ortiz, E. Ayuga-Téllez, and M.L. Contato-Carol.

This method is considered to be simple and fair. These variables are separated qualitatively to avoid errors of judgment. To simplify the Tedesco Method and better define subjective categories B,U and D organizations such as Purdue University have developed a tables that define variable conditions, see Table 1, Condition Rating For Landscape Trees. Table 1, provides defined condition ratings regarding tree structure, health and form along with associated formula values based on the assigned condition rating.<sup>2</sup> There are 6 condition ratings, Excellent, Good, Fair, Poor, Very Poor and Dead. Using Table 1, Condition Rating For Landscape Trees and the formula in Table 2, Appraisal Formula and Factors the Tree values were calculated. The valuation calculations for each Tree can be seen in Exhibits 11A through 11G, Appraised Tree Value.

CR ratings are defined in Table 1, Condition Rating For Landscape Trees. All ratings are based on a scale or value of 1.0 to .10 with 1.0 being the highest rating or value and .10 being the lowest rating or value. The CR values assigned were based on Table 1, Condition Rating For Landscape Trees. The F value is the functional limitations of a tree. This is a depreciation factor that is associated with the location and site of the tree and any factors that may limit future growth and health. An .80 rating to was assigned to Trees 2, 3 and 4 and .95 rating to Trees 1, 5,6,7 based on their proximity to the power line easement. The E value or external limitations value used considered environmental conditions such as water availability, utility vegetation management, local ordinances, the utility easement or right-of way and the Trees life expectancy. Lombardy Poplar trees have a 50 plus year life expectancy. The majority of the Trees were planted in 2004. The Trees planted in 2004 are 16 years old as of 2020. The Trees border the Complainant's hay field and are flood irrigated every 2 weeks at a minimum, with 3 to 6 inches of water for 3 days. The E value was based on the following facts; 1.) Life expectancy, 2.) No ordinances prohibiting this class of tree near power lines, 3.) They were planted well outside of a public utility easement, 4.) The Trees have a 50 year life expectancy, their remaining life expectancy is 34 years. The formula for life expectancy was calculated as Life Expectancy/1.0 or .02 point values of reaming life,  $(34 \times .02 = .68)$ . Therefore, the E factor for all the Trees valuations were set at a .68 value.



The per foot valuation of the Trees or UTC value is based on the largest specimen available at wholesale pricing. The Trees are Lombardy Poplars and were purchased from Washington state. Several wholesale nurseries were contacted in Idaho and none carried this species. One out of state nursery had this species in a 5 to 6 foot specimen at a cost of \$79.95 or \$13.32 per foot, plus shipping and tax. Another nursery had a 7-foot specimen at \$99.95 or \$14.27 per foot, plus shipping and tax. The Complainant, used a conservative UTC Value of \$13.00 per foot in the calculations, where a UTC Value of \$14.27 should have been used. A conservative UTC Value was used to stifle any attempts to claim the values were padded. The difference between the conservative and actual UTC value used amounts to a net loss of (\$843.51) to the Complainant.

#### Nurseries Contacted

Baxter Wholesale Nursery- None Available

R.D. Nursery - Only Robusta Poplar Available

Jayker Wholesale Nursery- None Available

Circle D Farm Sales Inc. - None Available

Willow Creek Wholesale Nursery- None Available

Fast Growing Trees - In stock 5 to 6 foot at 79.95 or 13.32 per foot based on 6-feet.

TyTy Wholesale Nursery -In stock 7 foot Lombardy Poplar Tree \$99.95 or 14.27 per foot.



**Table 1. Condition Rating for Landscape Trees**

This table is a general representation to assist in formula values. The tree condition ratings described below encompass factors of a tree's health, form, and above- and below-ground structure. Each tree can have any combination of the following health or structural issues, as well as others not mentioned. The expression of symptoms and signs is subjective. The appraiser should consider individual tree species characteristics and use existing circumstances as a reasonable scale to determine a tree's condition.

| Condition<br>Rating | Tree Structure  | Tree Health  | Tree Form  | Formula Values |
|---------------------|---|--|--|----------------|
|                     | Consider root condition/formation, trunk condition, and branch assembly and arrangement.  | Consider crown indicators — including vigor, density, leaf size, quality, and stem shoot extensions.   | Consider the general shape and overall form.   |                |
| Excellent           | Root plate undisturbed and clear of any obstructions. Trunk flare has normal development. No visible trunk defects or cavities. Branch spacing/structure and attachments are free of any defects.   | Perfect specimen with excellent form and vigor, along with a well-balanced crown. Trunk is sound and solid. No apparent pest problems. Normal to exceeding shoot length on new growth. Normal leaf size and color. Exceptional life expectancy for the species.  | Ideal tree for that species, including shape and canopy symmetry, health, and density. Outstanding function on the site or location.   | 1.0-.90        |
| Good                | Root plate appears normal, with only minor damage. Possible signs of root dysfunction around trunk flare. Minor trunk defects from previous injury, with good closure and less than 25% of bark section missing. Good branch habit; minor dieback with some signs of previous pruning. Co-dominant stem formation may be present, requiring minor corrections.            | Imperfect canopy density in 10% or less of the tree. Lacks natural symmetry. Less than half the normal growth rate and minor deficiency in leaf development. Few pest issues or damage, and controllable if present. Normal branch and stem development with healthy growth. Typical life expectancy for the species.  | Nearly ideal tree for that species, including shape and canopy symmetry, health, and density. Functions well on the site or location.  | .90-.75        |
| Fair                | Root plate reveals previous damage or disturbance. Dysfunctional roots may be visible around the main stem. Evidence of trunk damage or cavities, with decay or defects present and less than 30% of bark sections missing on trunk. Co-dominant stems are present. Branching habit and attachments indicate poor pruning or damage, which requires moderate corrections. | Crown decline and dieback up to 30% of the canopy. Poor overall symmetry. Leaf size smaller and color somewhat chlorotic. Shoot extensions indicate some stunting and stressed growing conditions. Obvious signs of pest problems contribute to a lesser condition. Some decay areas found in the main stem and branches. Below-average life expectancy for the species. | Acceptable tree for that species. Tree shape and symmetry are adequate, with some substantial asymmetry in shape and canopy form. May have considerable concerns for its use and function on the site or location. | .75-.50        |
| Poor                | Root plate disturbance and defects indicate major damage, with girdling roots around the trunk flare. Trunk reveals more than 50% of bark section missing. Branch structure has poor attachments, with several structurally important branches dead or broken. Canopy reveals signs of damage or previous topping or lion-tailing, with major corrective action required. | Lacking a full crown, with more than 50% decline and dieback that especially affects larger branches. Stunting obvious, with little evidence of growth on smaller stems. Leaf size and color reveals overall stress in the plant. Insect or disease infestation may be severe. Extensive decay or hollow characteristics. Low life expectancy for the species.           | Poor tree for that species. Highly irregular canopy shape and undesirable form make it unattractive and dysfunctional on the site or location.   | .50-.30        |
| Very Poor           | Severe damage within the root plate and root collar exhibits major defects that could lead to tree death or failure. A majority of the bark or trunk is affected, either decayed or missing. Branching is extremely poor or severely topped, with severe dieback in canopy. Little or no opportunity for mitigation of any tree parts.                                    | More than 70% of the canopy is in severe decline or dead. Canopy density is extremely low, with chlorotic and necrotic tissue dominating the canopy. Severe decay in the trunk and major branches. Root plate damage with a majority of roots damaged, diseased or missing. Very low life expectancy for the species.  | Disagreeable tree for that species, with highly diminished function and aesthetic appeal on the site or location.  | .30-.10        |
| Dead                |   |  |  | .10 or less    |

Nov. 2019

<sup>2</sup> Source: Tree Appraisal and the Value of Trees, Author Lindsey Purcell RCA, BCMA Urban Forestry Specialist, Purdue University Department of Forestry & Natural Resources Forestry and Natural Resources, Contributor Jeffrey Ling RCA, TPAQ Arborwise, <https://www.extension.purdue.edu/extmedia/FNR/FNR-473-W.pdf>.



**TABLE 2, APPRAISAL FORMULA AND FACTORS**

$$\text{Value} = \text{Vb} \times \text{BA} \times \text{S} \times \text{E} \times \text{I} \times \text{T} \times \text{R}$$

- Vb The value/market price for tree per cm<sup>2</sup> of basal area.  
 BA The section of the basal area.  
 S A variable defining the location.  
 E The health and aesthetic value.  
 I An index that reflects the tree's environmental compatibility.  
 T The ratio between life expectancy and age of the tree.  
 R The percentage or reduction in value due to the damage to the tree.

**(1) Basic Reproduction Cost = CSA x UTC**

CSA = The cross-sectional area of the subject tree.

UTC = The unit tree cost, determined by the Regional Plant Appraisal Committee (RPAC) or local wholesale cost.

**(2) Depreciated Reproduction Cost = CR x F x E x BRC**

CR = The condition rating of the subject tree.

F = The functional limitations rating of the subject tree.

E = External limitations rating

BRC = Basic reproduction cost

**(3) Total Additional Costs = cleanup, installation, maintenance.**

Such as costs associated with the removal of the subject tree, the installation of a new tree, along with post-planting care costs for a determined time.

**(4) Total Reproduction Cost = DRC + TAC**

DRC = Depreciated Reproduction Cost

TAC = Total Additional Costs

**(5) The Final Appraised Value = Final Value**



## Calculation Sheets For Tree's, Exhibits 1 Through 7

### EXHIBIT 11A, APPRAISED TREE VALUE

Tree No. 1

|           | Assigned<br>Values |
|-----------|--------------------|
| CSA Area  | 140.45             |
| UTC Value | \$13.00            |

**Final Basic Reproduction Cost                      \$1,825.80**

|          | Assigned<br>Values |
|----------|--------------------|
| CR Value | 0.8                |
| F Value  | 0.8                |
| E Value  | 0.68               |
| BRC Cost | \$1,825.80         |

**Final Depreciated Reproduction Cost                      \$794.59**

|                                  | Assigned<br>Values  |    |
|----------------------------------|---------------------|----|
| <b>Total Additional Costs</b>    | \$0.00              |    |
| DRC                              | \$794.59            |    |
| TAC                              | \$0.00              | *  |
| <b>Total Reproduction Cost</b>   | \$794.59            | ** |
| <br><b>Final Appraised Value</b> | <br><b>\$794.59</b> |    |

\* The TAC cost is set at \$0.00 as it is assumed in the calculations above that Idaho Power will do the removal of the subject tree and associated cleanup and debris removal. If not, the tree value shall need to be recalculated. Costs associated with the installation of a new tree, along with post-planting and care costs shall be provided by the appellant.

\*\* Typically, the Final Appraisal value is rounded to the nearest \$1000.00. In our calculations we did not do this.



## EXHIBIT 11B, APPRAISED TREE VALUE

Tree No. 2

|           | Assigned<br>Values |
|-----------|--------------------|
| CSA Area  | 103.18             |
| UTC Value | \$13.00            |

**Final Basic Reproduction Cost                      \$1,341.40**

|          | Assigned<br>Values |
|----------|--------------------|
| CR Value | 0.8                |
| F Value  | 0.8                |
| E Value  | 0.68               |
| BRC Cost | \$1,341.40         |

**Final Depreciated Reproduction Cost                      \$583.78**

|                                  | Assigned<br>Values  |    |
|----------------------------------|---------------------|----|
| <b>Total Additional Costs</b>    | \$0.00              |    |
| DRC                              | \$583.78            |    |
| TAC                              | \$0.00              | *  |
| <b>Total Reproduction Cost</b>   | \$583.78            | ** |
| <br><b>Final Appraised Value</b> | <br><b>\$583.78</b> |    |

\* The TAC cost is set at \$0.00 as it is assumed in the calculations above that Idaho Power will do the removal of the subject tree and associated cleanup and debris removal. If not, the tree value shall need to be recalculated. Costs associated with the installation of a new tree, along with post-planting and care costs shall be provided by the appellant.

\*\* Typically, the Final Appraisal value is rounded to the nearest \$1000.00. In our calculations we did not do this.

## EXHIBIT 11C, APPRAISED TREE VALUE

### Tree No. 3

|           | Assigned<br>Values |
|-----------|--------------------|
| CSA Area  | 45.86              |
| UTC Value | \$13.00            |

**Final Basic Reproduction Cost                      \$596.18**

|          | Assigned<br>Values |
|----------|--------------------|
| CR Value | 0.8                |
| F Value  | 0.8                |
| E Value  | 0.68               |
| BRC Cost | \$596.18           |

**Final Depreciated Reproduction Cost                      \$259.46**

|                                  | Assigned<br>Values  |    |
|----------------------------------|---------------------|----|
| <b>Total Additional Costs</b>    | \$0.00              |    |
| DRC                              | \$259.46            |    |
| TAC                              | \$0.00              | *  |
| <b>Total Reproduction Cost</b>   | \$259.46            | ** |
| <br><b>Final Appraised Value</b> | <br><b>\$259.46</b> |    |

\* The TAC cost is set at \$0.00 as it is assumed in the calculations above that Idaho Power will do the removal of the subject tree and associated cleanup and debris removal. If not, the tree value shall need to be recalculated. Costs associated with the installation of a new tree, along with post-planting and care costs shall be provided by the appellant.

\*\* Typically, the Final Appraisal value is rounded to the nearest \$1000.00. In our calculations we did not do this.



## EXHIBIT 11D, APPRAISED TREE VALUE

### Tree No. 4

|           | Assigned<br>Values |
|-----------|--------------------|
| CSA Area  | 38.54              |
| UTC Value | \$13.00            |

**Final Basic Reproduction Cost                      \$500.96**

|          | Assigned<br>Values |
|----------|--------------------|
| CR Value | 0.95               |
| F Value  | 0.8                |
| E Value  | 0.68               |
| BRC Cost | \$500.96           |

**Final Depreciated Reproduction Cost                      \$258.89**

|                                  | Assigned<br>Values  |    |
|----------------------------------|---------------------|----|
| <b>Total Additional Costs</b>    | \$0.00              |    |
| DRC                              | \$258.89            |    |
| TAC                              | \$0.00              | *  |
| <b>Total Reproduction Cost</b>   | \$258.89            | ** |
| <br><b>Final Appraised Value</b> | <br><b>\$258.89</b> |    |

\* The TAC cost is set at \$0.00 as it is assumed in the calculations above that Idaho Power will do the removal of the subject tree and associated cleanup and debris removal. If not, the tree value shall need to be recalculated. Costs associated with the installation of a new tree, along with post-planting and care costs shall be provided by the appellant.

\*\* Typically, the Final Appraisal value is rounded to the nearest \$1000.00. In our calculations we did not do this.

## EXHIBIT 11E, APPRAISED TREE VALUE

### Tree No. 5

|           | Assigned<br>Values |
|-----------|--------------------|
| CSA Area  | 390.13             |
| UTC Value | \$13.00            |

**Final Basic Reproduction Cost                      \$5,071.66**

|          | Assigned<br>Values |
|----------|--------------------|
| CR Value | 0.95               |
| F Value  | 0.8                |
| E Value  | 0.68               |
| BRC Cost | \$5,071.66         |

**Final Depreciated Reproduction Cost                      \$2,621.03**

|                                  | Assigned<br>Values    |    |
|----------------------------------|-----------------------|----|
| <b>Total Additional Costs</b>    | \$0.00                |    |
| DRC                              | \$2,621.03            |    |
| TAC                              | \$0.00                | *  |
| <b>Total Reproduction Cost</b>   | \$2,621.03            | ** |
| <br><b>Final Appraised Value</b> | <br><b>\$2,621.03</b> |    |

\* The TAC cost is set at \$0.00 as it is assumed in the calculations above that Idaho Power will do the removal of the subject tree and associated cleanup and debris removal. If not, the tree value shall need to be recalculated. Costs associated with the installation of a new tree, along with post-planting and care costs shall be provided by the appellant.

\*\* Typically, the Final Appraisal value is rounded to the nearest \$1000.00. In our calculations we did not do this.



## EXHIBIT 11F, APPRAISED TREE VALUE

### Tree No. 6

|           | Assigned<br>Values |
|-----------|--------------------|
| CSA Area  | 286.62             |
| UTC Value | \$13.00            |

**Final Basic Reproduction Cost                      \$3,726.11**

|          | Assigned<br>Values |
|----------|--------------------|
| CR Value | 0.95               |
| F Value  | 0.8                |
| E Value  | 0.68               |
| BRC Cost | \$3,726.11         |

**Final Depreciated Reproduction Cost              \$1,925.66**

|                                  | Assigned<br>Values    |    |
|----------------------------------|-----------------------|----|
| <b>Total Additional Costs</b>    | \$0.00                |    |
| DRC                              | \$1,925.66            |    |
| TAC                              | \$0.00                | *  |
| <b>Total Reproduction Cost</b>   | <b>\$1,925.66</b>     | ** |
| <br><b>Final Appraised Value</b> | <br><b>\$1,925.66</b> |    |

\* The TAC cost is set at \$0.00 as it is assumed in the calculations above that Idaho Power will do the removal of the subject tree and associated cleanup and debris removal. If not, the tree value shall need to be recalculated. Costs associated with the installation of a new tree, along with post-planting and care costs shall be provided by the appellant.

\*\* Typically, the Final Appraisal value is rounded to the nearest \$1000.00. In our calculations we did not do this.

## EXHIBIT 11G, APPRAISED TREE VALUE

Tree No. 7

|           | Assigned<br>Values |
|-----------|--------------------|
| CSA Area  | 326.11             |
| UTC Value | \$13.00            |

**Final Basic Reproduction Cost                      \$4,239.49**

|          | Assigned<br>Values |
|----------|--------------------|
| CR Value | 0.95               |
| F Value  | 0.8                |
| E Value  | 0.68               |
| BRC Cost | \$4,239.49         |

**Final Depreciated Reproduction Cost              \$2,190.97**

|                                | Assigned<br>Values |    |
|--------------------------------|--------------------|----|
| <b>Total Additional Costs</b>  | \$0.00             |    |
| DRC                            | \$2,190.97         |    |
| TAC                            | \$0.00             | *  |
| <b>Total Reproduction Cost</b> | \$2,190.97         | ** |
| <b>Final Appraised Value</b>   | <b>\$2,190.97</b>  |    |

\* The TAC cost is set at \$0.00 as it is assumed in the calculations above that Idaho Power will do the removal of the subject tree and associated cleanup and debris removal. If not, the tree value shall need to be recalculated. Costs associated with the installation of a new tree, along with post-planting and care costs shall be provided by the appellant.

\*\* Typically, the Final Appraisal value is rounded to the nearest \$1000.00. In our calculations we did not do this.